By Mr. LIVINGSTON: A bill (H. R. 8882) to carry out the findings of the Court of Claims in the case of Catharine Kelton—to the Committee on War Claims.

Also, a bill (H. R. 8883) to carry out the findings of the Court of Claims in the case of Julia A. Crusells—to the Committee on War Claims.

Also, a bill (H. R. 8884) to carry out the findings of the Court of Claims in the case of G. W. Aycock—to the Committee on War Claims.

Also, a bill (H. R. 8885) to carry out the findings of the Court of Claims in the case of Albert Godbee, deceased—to the Committee on War Claims.

Also, a bill (H. R. 8886) to carry out the findings of the Court of Claims in the case of A. G. McDonald, administrator of the estate of Robert H. Green, deceased—to the Committee on War Claims.

Also, a bill (H. R. 8887) for the relief of the heirs of Thomas Carter, deceased—to the Committee on War Claims,

By Mr. McCALL: A bill (H. R. 8888) granting an increase of pension to George T. Butterfield—to the Committee on Invalid Pensions.

By Mr. MADISON: A bill (H. R. 8889) granting an increase of pension to Morris B. McKeever—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8890) granting an increase of pension to David A. Clowes—to the Committee on Invalid Pensions.

By Mr. MARTIN of South Dakota: A bill (H. R. 8891) granting a pension to James W. South—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8892) granting a pension to George C. Stearns—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8893) granting a pension to Charles Hotgdon—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8894) granting a pension to William H. Anderson—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8895) granting an increase of pension to James L. McWilliams—to the Committee on Invalid Pensions.

By Mr. MORRISON: A bill (H. R. 8896) granting an increase of pension to Robert Glover—to the Committee on Invalid Pensions.

By Mr. MURPHY: A bill (H. R. 8897) granting an increase of pension to William Corkran—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8898) granting an increase of pension to Charles B. Davis—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8899) granting an increase of pension to Abel Inman—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8900) granting an increase of pension to Henry Dye—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8901) granting a pension to Harriet L. Westerfield—to the Committee on Invalid Pensions.

Also, a bill (H. R. 8902) granting a pension to Wilson M. Jones—to the Committee on Invalid Pensions.

By Mr. REEDER: A bill (H. R. 8903) granting an increase of pension to Henry C. Sprague—to the Committee on Invalid Pensions.

By Mr. SCOTT: A bill (H. R. 8904) for the relief of John Hogan, postmaster at Wagstaff, Kans.—to the Committee on Claims.

By Mr. SIMS: A bill (H. R. 8905) for the relief of Harry T. Herring—to the Committee on Military Affairs.

By Mr. VREELAND: A bill (H. R. 8906) granting a pension to Lafayette Taylor—to the Committee on Invalid Pensions.

By Mr. WASHBURN: A bill (H. R. 8907) granting a pension to Sadie M. Lowell—to the Committee on Pensions.

Also, a bill (H. R. 8908) granting a pension to Harriet M. Beaman—to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. AUSTIN: Petition of 40 men, requesting an amendment to the Constitution of the United States to permit women to vote—to the Committee on the Judiciary.

By Mr. BARTLETT of Georgia: Petitions of P. W. Ethridge, W. H. Bolton, W. H. Williams, J. J. Fisher, and L. Holmes, of Milner, Ga., and T. J. Biles, of Orchard Hill, Ga., asking a reduction of the duty on raw and refined sugar—to the Committee on Ways and Means.

By Mr. BURLEIGH: Petition of Lewiston and Auburn Merchants' Association, for removal of duty on hides—to the Committee on Ways and Means.

By Mr. GRIEST: Protest of the Lancaster Leaf Tobacco Board of Trade, against free entry of Philippine tobacco as detrimental to the interests of the tobacco growers, packers, dealers, and jobbers, and to cigar manufacturers and bench workers—to the Committee on Ways and Means.

By Mr. HAYES: Petition of Los Angeles Chamber of Commerce, against a national consular school—to the Committee on Foreign Affairs.

By Mr. HOLLINGSWORTH: Papers to accompany bills for relief of Joshua Dewees, Francis W. Leeper, Samuel Gooding, John N. Hanna, George W. Pitner, and John Seals—to the Committee on Pensions.

Also, petition of C. W. Criss Brothers, Steubenville, Ohio, for reduction of tariff on sugar—to the Committee on Ways and Means.

By Mr. LIVINGSTON: Paper to accompany bill for relief of heirs of Thomas Cater—to the Committee on War Claims.

By Mr. MURPHY: Petition of various farmers' unions of Texas County, Mo., for a parcels-post law—to the Committee on the Post-Offices and Post-Roads.

By Mr. NEEDHAM: Petition of Los Angeles Chamber of Commerce, against establishment of a national consular school—to the Committee on Foreign Affairs.

By Mr. ROBINSON: Paper to accompany bill for relief of heirs of Mrs. Marguerite E. Dennis—to the Committee on War Claims.

By Mr. SHEFFIELD: Petition of Joseph E. Caldwell and 90 other lithographers, of Providence, R. I., for higher duty on lithographic products—to the Committee on Ways and Means.

By Mr. SULZER: Petition of wholesale dry goods merchants of New York, against increase of duty on cotton goods—to the Committee on Ways and Means.

Also, petition of Darling & Co., of Long Island City, N. Y., against reduction of tariff on glue—to the Committee on Ways and Means.

Also, petition of National Industrial News, of New York City, for increase of duty on lithographic products—to the Committee on Ways and Means.

Also, petition of Lord & Taylor and others, against increase of duty on hosiery goods—to the Committee on Ways and Means.

Also, petition of Charles Morningstar & Co., favoring reduction of duty on potato glucose—to the Committee on Ways and Means.

Also, petition of Standard Importing Company, against increase of duty on kippered herrings—to the Committee on Ways and Means.

Also, petition of Thomas & Thompson Company, of Baltimore, Md., for a duty on sheep dip—to the Committee on Ways and Means.

Also, petition of National Tea and Coffee Association, against a tariff on tea—to the Committee on Ways and Means.

Also, petition of New York Silk Conditioning Works, favoring same duty on raw as scoured wool—to the Committee on Ways and Means.

Also, petition of Rev. H. F. Adams, of New York City, for establishment of a federal national children's bureau—to the Committee on Labor.

By Mr. WASHBURN: Paper to accompany bill for relief of Sarah M. Lowell and Hattie M. Beaman—to the Committee on Invalid Pensions.

SENATE.

TUESDAY, *April 27, 1909.*

Prayer by Rev. Ulysses G. B. Pierce, of the city of Washington.

The Journal of yesterday's proceedings was read and approved.

CIVIL-SERVICE EMPLOYEES FROM NEW HAMPSHIRE.

The VICE-PRESIDENT laid before the Senate a communication from the Civil Service Commission, transmitting, in response to a resolution of the 21st instant, a list of the names of persons now in the civil service charged to the State of New Hampshire, etc. (S. Doc. No. 21), which, with the accompanying paper, was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of sundry citizens of Los Angeles, Cal., praying for the adoption of an amendment to the Constitution granting the right of suffrage to women, which was referred to the Committee on Woman Suffrage.

He also presented petitions of sundry citizens of New York, Pennsylvania, Tennessee, Arizona, Missouri, Louisiana, Georgia, Indiana, Texas, North Dakota, Iowa, Washington, South Carolina, Arkansas, Kentucky, Alabama, Minnesota, Ohio, New Mexico, Maine, Oklahoma, Illinois, Nebraska, Wisconsin, West Virginia, and Maryland, praying for a reduction of the duty on raw and refined sugars, which were ordered to lie on the table.

Mr. CULLOM presented petitions of sundry citizens of Cisne, Hoopeston, and Pocahontas, all in the State of Illinois, praying for a reduction of the duty on raw and refined sugars, which were ordered to lie on the table.

He also presented a petition of sundry manufacturers and dealers in leather goods of Chicago, Ill., and St. Louis, Mo., praying for the repeal of the duty on hides, which was ordered to lie on the table.

Mr. DU PONT. I present a petition of the Board of Trade of Wilmington, Del., relative to a change of the date of the inauguration of the President of the United States. I ask that the petition be printed in the RECORD and referred to the Committee on Privileges and Elections.

There being no objection, the petition was referred to the Committee on Privileges and Elections and ordered to be printed in the RECORD, as follows:

Whereas experience has shown that weather conditions are, as a rule, very unfavorable at the date set for the inauguration of the President of the United States at the beginning of the presidential term, viz, March 4, and this fact was particularly emphasized by the fierce storm that prevailed at the recent inauguration of President Taft; and

Whereas in consideration of these facts, together with the further fact that a later date in the calendar year would likely prove more propitious: Therefore be it

Resolved by the Board of Trade of the City of Wilmington, Del., That the Senators and Representatives in Congress from this State be, and they are hereby, requested to exert themselves for a change in the existing law whereby the inauguration of the President will be celebrated hereafter later in the spring.

Passed unanimously by the Wilmington Board of Trade April 6, 1909.

Attest:

[SEAL.] GEO. H. MCGOVERN, *Secretary.*

Mr. DU PONT presented petitions of sundry citizens of Delmar, Del., praying for a reduction of the duty on raw and refined sugars, which were ordered to lie on the table.

Mr. BRISTOW presented petitions of suudry citizens of Imes and Elbing, Kans., praying for a reduction of the duty on raw and refined sugars, which were ordered to lie on the table.

Mr. JONES presented petitions of sundry citizens of Castle Rock, Tacoma, Tracyton, Turnwater, Barry, Sanderson, Davenport, and Startup, all in the State of Washington, praying for a reduction of the duty on raw and refined sugars, which were ordered to lie on the table.

He also presented a petition of the Teachers' Association of Walla Walla, Columbia, and Benton counties, all in the State of Washington, praying for the passage of the so-called "children's bureau bill," which was referred to the Committee on Education and Labor.

Mr. PILES presented petitions of sundry citizens of Buckley and Turnwater, in the State of Washington, praying for a reduction of the duty on raw and refined sugars, which were ordered to lie on the table.

Mr. BULKELEY. I present resolutions adopted at a meeting of the directors of the New England Tobacco Growers' Association, held at Hartford, Conn., April 20, relative to the duty on tobacco imported from the Philippine Islands. I ask that the resolutions lie on the table and that they be printed in the RECORD.

There being no objection, the resolutions were ordered to lie on the table and to be printed in the RECORD, as follows:

HARTFORD, CONN., *April 20, 1909.*

At a meeting of the directors of the New England Tobacco Growers' Association the following resolutions were unanimously adopted:

Whereas the present tariff measure which is now before the United States Senate, known as the "Payne bill," is a menace to the tobacco-growing industry of the New England States on account of allowing a certain portion of the product of the Philippine Islands to enter this country free of duty, thereby compelling the tobacco growers of the United States to enter into competition with the cheap labor of the Filipino;

Whereas we believe that if the present tariff measure now before Congress becomes a law that part of the bill which relates to the free entry of the Philippine tobacco will be used as an entering wedge for a greater quantity to come into this country free of duty in the near future;

Whereas we, the directors of the New England Tobacco Growers' Association and the growers of Connecticut tobacco, strongly reiterate our former action on this subject and strenuously object to any measure in the proposed tariff bill which may become a hardship to the producers of leaf tobacco in this country:

Resolved, That Mr. Marcus L. Floyd and Joseph G. Mitchelson, of Tariffville, Conn., are hereby duly appointed as delegates to represent the New England Tobacco Growers' Association at Washington, D. C., and are requested to use every honorable means in their power to defeat this proposed legislation;

Resolved, That we fully concur in any action which they may take in our behalf; be it further

Resolved, That we, the directors of the New England Tobacco Growers' Association, appreciate the efforts which have been made by our Senators and Congressmen to protect our interests, and that it is the sense of this meeting that a copy of the above resolutions be forwarded to them.

The above is a true copy.

Attest:

W. K. ACKLEY,
Secretary pro tempore New England Tobacco Growers' Association.

Mr. PERKINS presented a memorial of California Harbor, No. 15, American Association of Masters, Mates, and Pilots, of San Francisco, Cal., remonstrating against a reduction of the duty on lumber, which was ordered to lie on the table.

He also presented a memorial of the board of directors of the Chamber of Commerce of Los Angeles, Cal., remonstrating against the establishment of a national consular school, which was referred to the Committee on Commerce.

He also presented petitions of sundry citizens of San Jose and Lake City, Cal., praying for a reduction of the duty on raw and refined sugars, which were ordered to lie on the table.

Mr. BRANDEGEE presented a memorial of Local Union No. 407, Cigar Makers' International Union of America, of Norwich, Conn., remonstrating against the repeal of the duty on tobacco and cigars imported from the Philippine Islands, which was ordered to lie on the table.

He also presented petitions of the Challenge Cutlery Corporation, of Bridgeport; of the Thomaston Knife Company, of Thomaston; and of the Miller Brothers Cutlery Company, of Meriden, all in the State of Connecticut, praying for the retention of the proposed duty on imported knives or erasers, which were ordered to lie on the table.

Mr. KEAN presented a petition of sundry citizens of Paterson, N. J., and a petition of Typographical Union No. 195, International Typographical Union, of Paterson, N. J., praying for a reduction of the duty on wood pulp and print paper, which were ordered to lie on the table.

He also presented a petition of the Board of Trade of Jersey City, N. J., praying for the appointment of a tariff commission, which was referred to the Committee on Finance.

He also presented a memorial of the executive board of the State Federation of Labor, of Hoboken, N. J., remonstrating against a reduction of the duty on steel and iron, which was ordered to lie on the table.

HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY.

Mr. KEAN, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred Senate resolution No. 38, submitted yesterday by Mr. CLARK of Wyoming, reported it without amendment, and it was considered by unanimous consent and agreed to, as follows:

Senate resolution 38.

Resolved, That the Committee on the Judiciary, or any subcommittee thereof, be authorized to send for persons and papers and to administer oaths and to employ a stenographer to report such hearings as may be had in connection with any subject which may be pending before said committee, and to have said hearings printed for the use of the committee; that the committee may sit during the sessions of the Senate, and that the expenses thereof be paid out of the contingent fund of the Senate.

BILLS INTRODUCED.

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BULKELEY:

A bill (S. 2002) to establish a fish-cultural station in the State of Connecticut; to the Committee on Fisheries.

By Mr. JONES:

A bill (S. 2003) granting a pension to Jesse H. Arnold; and

A bill (S. 2004) granting a pension to Emsley P. Canutt; to the Committee on Pensions.

By Mr. BRANDEGEE:

A bill (S. 2005) granting an increase of pension to Emma M. Selmer; to the Committee on Pensions.

By Mr. PAYNTER:

A bill (S. 2006) for the relief of the county court of Allen County, Ky.; and

A bill (S. 2007) for the relief of the county court of Owen County, Ky.; to the Committee on Claims.

By Mr. BURROWS:

A bill (S. 2008) authorizing the President of the United States to select from the retired list of the army an officer not above the rank of brigadier-general, who may have distinguished himself during the civil war, throughout twenty-five years of Indian wars, through the Spanish-American war, and the insurrection in the Philippine Islands, and to appoint, by and with the advice and consent of the Senate, the officer so selected to be major-general, United States Army, with the pay and allowances established by law for officers of that grade on the retired list; to the Committee on Military Affairs.

By Mr. KEAN:

A bill (S. 2009) granting a pension to Julia Beach; to the Committee on Pensions.

By Mr. CRANE:

A bill (S. 2010) granting an increase of pension to Susan J. Tukey (with the accompanying papers); to the Committee on Pensions.

A bill (S. 2011) for the relief of Charles E. Currier; to the Committee on Claims.

By Mr. WARREN:

A bill (S. 2012) for the relief of persons who have conveyed lands to the United States under certain conditions; to the Committee on Public Lands.

By Mr. CLAPP:

A bill (S. 2013) granting an increase of pension to D. F. Gallup (with the accompanying paper); and

A bill (S. 2014) granting an increase of pension to William De Wolf Pringle (with the accompanying paper); to the Committee on Pensions.

INCOMES AND INHERITANCES.

Mr. BROWN. I introduce a joint resolution, which I ask be read at length.

The joint resolution (S. J. R. 25) to amend the Constitution relative to incomes and inheritances was read the first time by its title and the second time at length, as follows:

Senate joint resolution 25.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following section be submitted to the legislatures of the several States, which, when ratified by the legislatures of three-fourths of the States, shall be valid and binding as a part of the Constitution of the United States:

"The Congress shall have power to lay and collect taxes on incomes and inheritances."

Mr. BROWN. Mr. President, I desire to have the joint resolution printed and lie on the table.

The VICE-PRESIDENT. Without objection, that order will be made.

Mr. BROWN. I also desire to state that, with the indulgence of the Senate, to-morrow morning after the routine business I shall make a few remarks upon the subject.

AMENDMENT TO THE TARIFF BILL.

Mr. McCUMBER submitted an amendment intended to be proposed by him to the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, which was ordered to lie on the table and be printed.

THE TARIFF.

The VICE-PRESIDENT. The morning business is closed.

Mr. SCOTT rose.

Mr. LODGE. I ask that the tariff bill may be laid before the Senate.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

Mr. SCOTT. Mr. President, we are engaged, and have been for some time, considering a revision of the tariff. The so-called "Payne bill," as passed by the House of Representatives, has been seen, examined, and studied by the American people. Since then I have received letters by the score asking that this or that provision in the bill be changed, and I presume this has been the experience of every other Senator. It does not seem, from the communications I receive, at least, that there is any one schedule in the bill that is satisfactory to the people as a whole. I am glad, though, to see changes in the measure as reported by the Finance Committee. Of course, Mr. President, I have no doubt that ultimately we will pass a bill, but why, Mr. President, all this excitement and the upsetting of the business interests of the country? For, when we are through with it, we will not have nearly so good a bill, in my judgment, as the present Dingley law.

I hail from a section of the country which has profited greatly from tariff and will profit more in the future. New England, for instance, profited in the past. Now she is ready for a downward revision of the tariff and free coal, if she can get it. But the Southland sees ahead of her nothing but prosperity under a protective tariff. In the past thirty years she has made marvelous strides. She has developed more rapidly in manufactories than any other portion of our country. Right in the midst of the great raw material of the United States, notwithstanding the fact that the large majority of her statesmen have spent days and nights opposing protection, she has developed, and will soon be the great manufacturing section of this country. Despite the doctrines of free trade and tariff for revenue only; despite the fact that in the past she has accepted the fads of other localities even after they were tested and abandoned elsewhere; despite the fact that she has been used to great disadvantage by other sections, she has prospered and developed and soon will be as insistent on a tariff as New England once was. At no distant day you will find the people of the South sending to Congress Members who will be the strongest protectionists this country has ever produced.

You remember that Blaine, in his Twenty Years in Congress, referred to the fact that Webster was a free trader until conditions changed in Massachusetts. As it became evident it was going to become a manufacturing State, he then changed to a strong protectionist. On the other hand, Calhoun, believing that the South was going to be a manufacturing part of our country, was a strong protectionist; but when he found the South had turned to agriculture and New England to manufacture, he also changed his position and became a free trader. Blaine says:

The American protectionist does not seek to evade the legitimate results of his theory. He starts with the proposition that whatever is manufactured at home gives work and wages to our own people, and that if the duty is even put so high as to prohibit the import of the foreign article, the competition of home producers will, according to the doctrine of Mr. Hamilton, rapidly reduce the price to the consumer.

Further on he says:

Free traders do not, and apparently dare not, face the plain truth—which is that the lowest priced fabric means the lowest priced labor. On this point protectionists are more frank than their opponents; they realize that it constitutes, indeed, the most impregnable defense of their school. Free traders have at times attempted to deny the truth of the statement, but every impartial investigation thus far has conclusively proved that labor is better paid and the average condition of the laboring man more comfortable in the United States than in any European country.

Mr. President, I do not desire to discuss in detail the question of protection, free trade, or a tariff for revenue only. My position is well known. Before this honorable body some years ago I gave in full the reasons for the faith I hold. It is sufficient to say that I am a protectionist. I believe in the doctrine from the protective standpoint. I only desire on this occasion to discuss this tariff bill now before the Senate from the standpoint of its effect on the South in general and West Virginia in particular. In so doing, I desire to state that the protection I would extend to West Virginia and her products I stand ready to extend, so far as my vote is concerned, to any other State and its products. I know that protection works alike everywhere. To reach the conclusions I desire, I must refer briefly to the growth of the South under protective tariff, and of West Virginia particularly.

The growth of that entire part of the United States lying south of Mason and Dixon's line since 1880 has been most remarkable. And here I desire to have printed from the Manufacturers' Record, without reading, figures to show the wonderful development of the South as a whole since that year—a development which has come under a protective tariff, a measure which the large majority of this section opposed.

I ask that certain figures may be inserted as a part of my remarks, without reading.

The VICE-PRESIDENT. Without objection, the statement will be printed in the RECORD.

The matter referred to is as follows:

Population, from 16,369,960 to 26,834,705, or by 10,464,745, equal to 63.9 per cent.

True value of property, from $7,505,000,000 to $20,073,686,216, or by $12,568,686,216, equal to 167 per cent.

Capital in manufactures, from $257,244,564 to $2,100,000,000, or by $1,842,755,436, equal to 716.6 per cent.

Products of manufacturers, from $457,454,777 to $2,600,000,000, or by $2,142,545,223, equal to 468.9 per cent.

Capital in cotton mills, from $21,000,000 to $266,500,000, or by $245,500,000, equal to 1,169 per cent.

Active spindles in cotton mills, from 667,754 to 10,443,761, or by 9,776,007, equal to 1,646 per cent.

Active looms in cotton mills, from 14,323 to 222,539, or by 208,216, equal to 1,453 per cent.

Cotton used, from 108,694,889 pounds to 1,059,519,893 pounds, or by 950,825,004 pounds, equal to 875 per cent.

Capital in cotton-oil mills, from $3,800,000 to $90,000,000, or by $86,200,000, equal to 2,268 per cent.

Pig iron produced, from 397,301 tons to 3,445,221 tons, or by 3,047,920 tons, equal to 767 per cent.

Coke made, from 372,436 tons to 9,289,471 tons, or by 8,917,035 tons, equal to 2,394 per cent.

Value of lumber products, from $39,000,000 to $365,000,000, or by $326,000,000, equal to 836 per cent.

Lumber cut, from 3,410,294,000 feet to 19,303,983,000 feet, or by 15,893,689,000 feet, equal to 466 per cent.

Value of farm products, from $660,000,000 to $2,225,000,000, or by $1,565,000,000, equal to 237 per cent.

Bales of cotton raised, from 5,723,934 to 10,582,966, or by 4,859,032 bales, equal to 85 per cent.

Value of the cotton crop, not including seed, from $312,303,000 to $614,034,000, or by $301,731,000, equal to 96 per cent.

Corn, wheat, and oats raised, from 577,328,440 bushels to 818,318,000 bushels, or by 240,789,560 bushels, equal to 41 per cent.

Value of mineral products, from $13,817,930 to $286,818,347, or by $273,000,417, equal to 1,976 per cent.

Coal mined, from 6,037,003 tons to 94,829,835 tons, or by 88,792,832 tons, equal to 1,470 per cent.

Iron ore mined, from 842,454 tons to 6,316,027 tons, or by 5,473,573 tons, equal to 649 per cent.

Petroleum produced, from 179,000 barrels to 27,239,057 barrels, or by 27,060,057 barrels, equal to 15,118 per cent.

Phosphate mined, from 190,763 tons to 2,253,198 tons, or by 2,062,435 tons, equal to 1,081 per cent.

Railroad length, from 20,612 miles to 67,181 miles, or by 46,459 miles, equal to 221 per cent.

Exports from southern ports, from $264,905,753 to $648,098,715, or by $383,192,962, equal to 145 per cent.

Aggregate resources of national banks, from $171,464,172 to $1,100,117,838, or by $928,653,666, equal to 541 per cent.

Capital of national banks, from $46,688,930 to $162,558,230, or by $115,869,300, equal to 248 per cent.

Individual deposits in national banks, from $64,733,249 to $531,277,537, or by $466,544,288, equal to 721 per cent.

Deposits of state banks, savings banks, private banks, and loan and trust companies, from $83,444,576 to $624,752,437, or by $541,307,861, equal to 649 per cent.

Expenditures for common schools, from $9,796,040 to $37,687,615, or by $27,891,575, equal to 285 per cent.

Mr. SCOTT. Mr. President, what a marvelous record these figures show. What a wonderful future lies before the Southern States!

West Virginia, the State which I have the honor in part to represent in this Chamber, has been wiser than some of her sisters in the South. As a State, she is 46 years old this coming June. For years ignored by the eastern portion of the "Old Dominion," the western part was looked upon as a mountain wilderness. Now the world knows West Virginia.

The value of her coal can scarcely be estimated. Ten thousand miles of her territory is underlaid with this mineral. This gives only a faint idea to the general mind of the immensity of this deposit. To say that there are over 6,000,000 acres of West Virginia in coal land gives but a little better idea. When it is stated, however, that the coal of this State could supply the markets of the United States for two hundred years with bituminous coal at the present rate of production, some idea can be gained.

Her wealth in petroleum is unknown, and what the future of this product may be no one can tell. Last year the oil output was valued at over $20,000,000. She is also rich in natural gas, and the value of the production of that article last year amounted to over $8,000,000. But in these three items, each great in itself, only a portion of our wealth is known. New gas wells and new oil wells are being found every day and new coal territory is being developed.

In addition to these there is other great material wealth. Sandstone of almost any size and texture can be quarried. An abundance of good potter's and fire clay is found, and West Virginia ranks fourth in its production of pottery products and has the largest individual factory in the world. Good grits for grindstones and valuable iron ore are located in many of its hills, and one county of the State furnishes a white sand of exceptional purity, about the best found in the United States for glass making.

Our forests now standing are superior, especially as regards hard woods. By far the larger portion of the uncleared lands is still in forests. Except in California, where the redwood trees attain tremendous size, no finer timber can be found within the confines of the Union than that which grows in West Virginia. Tremendous onslaughts have been made upon these forests, but yet we still have an abundance of hard wood, and some of the largest tanneries of the country are located within our borders.

With all this great mineral wealth, we are proud of our farms, for West Virginia is an agricultural State. The blue grass of Kentucky is equaled by that of Greenbrier and adjoining counties near the center of the State, and the stock raised there brings the highest price of any meat that is brought into the New York markets. Sheep roam on a thousand hills, and their wool is among the best produced.

Thus blessed by nature, West Virginia has possessed from the beginning, and still possesses, the two great elements of success for manufacturing—cheap and abundant raw material and cheap and abundant fuel. As I have said before, nowhere else in the world are these two essentials of manufacturing life more abundantly found, and I believe, and the great majority of the people of West Virginia believe, and in fact know, that the raw material and cheap fuel would still be lying undeveloped in our mountains and valleys had it not been for a protective tariff. It would have been absolutely impossible, without our protective tariff, to have established in this State the iron and pottery industries, enabling us to make the finest wares produced anywhere. There would have been no steel manufactories, of which we are so proud; there would have been no development of iron mines, and of our oil fields and gas wells, which are pushing our State to the very front ranks. There would have been no such development of our agricultural lands or of our lumber interests. I hesitate even to try to imagine what would be the condition of West Virginia to-day were it not for a protective tariff. I do not have to guess as to what has been the result. It is before us. In West Virginia all we have to do is to look on all sides and see the actual realization of what a protective tariff has brought to us.

The census of 1870 was the first to schedule in any way the material interests of West Virginia, and all comparison as to growth must be based on that. In that year our population was 424,000; to-day it is 1,250,000. Of these 800,000 are over 10 years of age, and among them are only 80,000 illiterates. In 1870 we had only eleven millions of capital employed in manufacturing; now we have over 5,000 manufacturing establishments with upward of eighty millions of capital invested, and finished product worth one hundred and twenty-five millions. In 1870 we had only 1,527 miners, with an annual wage of $800,000. Now we have, in round numbers, a thousand mines in operation with over 60,000 wage-earners, with annual wage amounting to thirty millions. In 1870 the product of our mines was valued at only two and one-half millions, while now it is valued at over fifty millions. In 1870 the value of our farms was only one hundred millions; now it is more than double.

Compared with our conditions since we became a State, we have doubled in population, while in wealth and wage-earning capacity we have increased over fourfold. In other words, in our ability to buy, to possess the necessaries and luxuries of life, to enjoy the advantages of work in the factories and mines and on the farm, with a consequent joy of the home and fireside, we are twice as well off as we were thirty years ago. All this I believe, and a very great majority of the people of West Virginia believe, has come to us through the benefits of a protective tariff. Without it we fear we would still be the wilderness west of the Allegheny Mountains.

With such interests as these it is not to be wondered at that the Representatives of West Virginia in this Chamber have been overwhelmed with requests to see that at least the Dingley rates on most articles are retained. I had the honor during the winter just closed of addressing the legislature of my own State, and told that body that unless I received instructions from it I was a "standpatter" on tariff; that I favored the retention of the present law, and that the best interests of the country would be conserved by not tinkering with it. That great body of West Virginians indorsed my stand, and I feel that in appealing to this Senate for rates that will amply protect the industries of West Virginia, and of the entire country, I have behind me the official support of the representatives of the citizens of West Virginia. So I stand here ready, to the best of my ability, to battle for what I think is to their interests and what they have said they know is for their own interest.

COAL.

Perhaps the largest industry in our State is that of mining bituminous coal. Three great railroads have traversed our State for several years, and within the past month or so a fourth has been opened for traffic. The papers of our land have been filled with accounts of the completion of this great project, since one of the shining literary lights of our country was the guest of honor on this memorable occasion. Experts declare that the section of the State through which this new road runs will yet become the richest bituminous field known in the world. When mines along this road have been opened, and are in full working order, West Virginia's output of coal will be greatly increased. And it must be remembered that this road was built, and these coal properties were opened up, under the knowledge that there was a protective tariff on coal and with the belief that this tariff would remain. In the year 1907 the total bituminous-coal production in the United States amounted in round numbers to 395,000,000 tons. Of this enormous amount of coal West Virginia furnished in round numbers 50,000,000 tons, nearly one-seventh of the total output. With the development along the new road, which has just been opened to traffic, these figures may be swelled in the near future, if the tariff is retained, perhaps 15,000,000 tons. In mining this amount of coal over 60,000 miners are employed, and on their labors depend directly over 300,000 people. The railroads which haul it employ thousands of men, and these men, with their families, are all directly interested. These figures do not take into account the many millions of dollars invested in the operations.

In addition to the proposed change in tariff rates West Virginia is threatened with a traffic arrangement almost shutting it out of the market. Lying almost halfway between the Lakes and the seaboard, Ohio and Illinois on the north, and Pennsylvania on the east, can reach either of these shipping points with a shorter haul than can West Virginia. Several years ago when the "railroad rate bill" was before Congress I took occasion in the Senate to point out the danger that this country was drifting toward in the matter of the governmental regulation of freight rates. I suggested then that it was only a question of time, if the policy being inaugurated were followed, until a fixed charge per ton per mile would be the established rate in this country. I fear that we are rapidly approaching this condition. So with freight discrimination and tariff discriminations

can it be wondered at that my State is up in arms and that I am besieged by letters and telegrams begging for relief? I stand against discrimination and will stand against it as long as I have strength.

I do not propose, if my efforts can prevent it, if my vote counts for anything, that one section of the country shall benefit at the expense of the State which I in part represent in this honorable body. The millions of dollars invested in the coal business of West Virginia; the hundreds of thousands of men, women, and children whose livelihood, happiness, and prosperity depend on this great industry, are as dear to me as are the interests of other people in other sections to the Senators who represent them. But I believe that this great country is one, as much one as a man is a unit, and that one section can not be dwarfed or retarded in its development to help another any more than in the man, for one member can not be dwarfed at the expense of another.

Mr. President, the provision of the Payne bill placing the rate at 67 cents a ton is a small duty. That this provision includes culm and coal slack is only the barest justice. But that the ton is made the long ton, and a countervailing duty provided, is wrong—totally and forever wrong. I am utterly and absolutely opposed to a countervailing duty. I think an American Congress is able to pass an American law to govern an American industry. Further than that, this countervailing or reciprocal clause is an illusion and snare; it is in the interest of a few coal operators located near the Canadian border and the New England States; the remainder of the entire country would suffer, and very grievously. It takes no stretch of the imagination to figure what would happen to the great coal industry of this country were the tariff rates charged on imports left to the whims, the caprice, or the fancy of a Canadian cabinet minister. This is a great country of ours and it takes care of its own. When the great earthquake devastated that beautiful city of San Francisco only a short three years ago the then President of the United States courteously, but kindly, declined the offers of outside assistance by saying that we could take care of our own. That was right; we can take care of our own, and we intend to take care of our own. But I am told that during the late coal famine in some of the Western States lying along the Canadian border, when every effort was being made to get coal trains in this country through, the Canadian officials were ordered to save their coal for their own people, and not to send it over into the United States, and the Canadian railroad officials put up their rates—this when a great coal famine was on, when citizens of the United States were suffering from cold. Yet we are to give to these people the right to say when our duties shall come off or how long they shall remain on. Not while I have a voice and a vote.

The arguments which apply to West Virginia and to its relation to the coal traffic apply with equal force over the entire country.

Mr. GORE. Mr. President——

The VICE-PRESIDENT. Does the Senator from West Virginia yield to the Senator from Oklahoma?

Mr. SCOTT. I prefer that the Senator would wait until I have concluded my remarks.

The VICE-PRESIDENT. The Senator from West Virginia prefers not to yield.

Mr. SCOTT. Removing the duty on coal would render a half dozen of our Western States dependent on a foreign country for a necessity of life; would close down coal mines in many States; would depopulate many towns dependent upon this industry; would ruin numbers of American coal operators; would cut wages, and would be no benefit to the American consumer. I believe in charity which begins at home. So I stand for a tariff that will protect the coal industry of West Virginia and of the entire United States. We will aid the manufacturer, because he gets a better quality of coal; we will give to thousands of workingmen better wages; we will offer to thousands of children better opportunities for education and advancement; we will give to the merchant more customers, to the farmer more consumers, and to the railroads more tonnage.

LUMBER.

The South is rich in timber, and West Virginia is not behind any of her sister States of this section in the production of this product. In the year 1905, 900,000,000 feet b. m. of timber were cut and sawed at a value of nearly $14,000,000. From 15,000 to 20,000 wage-earners were employed and wages paid to the amount of over $5,000,000. With such forests and products, with so many wage-earners, it can readily be seen that West Virginia is vitally interested in the tariff on lumber.

Yet the tariff on lumber is cut from what it was in the Dingley bill. Why? Will it mean cheaper lumber and cheaper building? Will the Western States, which are crying for cheaper lumber, get it? These are questions which Senators may well ponder and may well study carefully before answering. I can tell them now that it will not.

Even under a protective tariff, such as we have in the Dingley law, Canada exported to the United States four times as much lumber as the United States exported to Canada. Forty-eight per cent of all the lumber manufactured in the United States annually is produced in the South. And the South is the section alone that stands half the loss, or that is affected to the extent of one-half of the cut made in lumber. On that one-half West Virginia must stand her proportionate share. Many reasons are given why West Virginia should not be thus affected. I have mentioned some of them before in the questions which I propounded as to cheaper prices. With many the cry for the reduction in the tariff on lumber, or even for it being placed on the free list, is that thereby we can conserve our forests. Why, Mr. President, that argument alone should damn the entire effort made to have lumber on the free list, or even to have a revised tariff. Of course if lumber is put on the free list Canada will come in and we open up to her a market such as she never dreamed of. Already she is preparing to take advantage of the situation, which she thinks is coming, and is reaching out for her share. Listen to what a wide-awake Canadian wood trade paper says. In a letter sent to the Everglade Cypress Lumber Company, of Parkersburg, W. Va., this paper urges our West Virginia people to immediately begin to arrange for the importation of Canadian lumber. It says:

> The Payne tariff bill now before the United States Congress will either result in free lumber or a 50 per cent reduction in the present $2 import duty. This will give a further impetus to lumber imports. If you are not now handling Canadian lumber, doubtless you will be in the near future.

Is not this alone evidence enough of what will happen should the present rate on lumber not stand or should it go on the free list? My constituents ask me to fight against such a rate, and I am here to do so.

But would our forests be conserved under the Payne bill rate or by lumber being put on the free list? Listen to what a lumberman says. I know him personally. This gentleman whom I am about to quote has been a member of our state legislature. He is a young man who has grown up in the woods of West Virginia; he has made them a study, and he talks as one having authority. He says:

> I notice that there has been some strong argument brought to bear along the line of forest preservation as to why the tariff should be removed from lumber, but as one who has been raised, as you might say, in the woods and having given a lifetime study to the lumber industry I wish to call your attention to the following brief statements of the facts as I see them:
>
> First. Any reduction on the tariff schedule will tend to affect the entire lumber industry of the Southern States and also cripple the business with us.
>
> Second. A reduction in the tariff will not preserve the forests any more nor as much as the present tariff rate, because the depreciation in price in the lower grades will make it, considering the advanced price of labor, cost of stocking, equipments, and material and food supplies, so that a majority of the lower grades will either be left in the woods or burned at the mill because it will not justify the cost of production.
>
> Third. I notice that some are claiming that it will cheapen the price of lumber to the consumer by reducing the tariff, which in my mind is a misconstruction of the condition, because the manufacturer to-day is receiving no more profit on his lumber than he did some years ago. The cost of production at the mill has more than doubled in the past ten years. We are to-day paying $10 to get lumber taken from the stump on board a car a distance of 2 miles, while ten years ago white pine was cut from the forests here, driven on the river 60 miles, and put on board a car for $7. At that time we hired men at 75 cents and $1 per day, while we are paying to-day from $1.75 to $3 for the same class of help.
>
> Now, the position resolves itself into this, that the lumberman will either be compelled to shut down his operation, leaving part of his lumber in the woods, or else cut the price of labor. Neither of the three things are consistent with the views of the lumberman or Republican policies.

You notice, Mr. President, that this young lumberman—this young man, who possessed the esteem and confidence of his fellow-citizens to a sufficient degree to be chosen to represent them in our state legislature—emphasizes two facts, first, that to-day lumbermen are paying $10 to get lumber taken from the stump on board a car a distance of 2 miles, while ten years ago white pine was cut from the forests in the same locality, driven on the river for 60 miles, and put on board a car for $7. He emphasizes the fact that at that time men were hired for 75 cents and $1 per day, while at the present time for the same class of labor $1.75 to $3 per day is being paid.

The second point that he emphasizes is that if this tariff is reduced, or placed on the free list, there is nothing left for the American lumbermen but to cut wages. Mr. President, this young man is a wage-earner himself; he sees the inevitable. Are we ready to say to the lumbermen all over the country the Republican party stands for a cut in their wages of 50 or 60 per cent?

I might extend these illustrations and examples to an extent that would become wearisome to this body. All these statements come from men who are vitally interested—the manufacturer as well as the wage-earner; men who know what they want and what a reduction means. They are men of my own State, and their expression is only the sentiment of the entire South, for to me have come resolutions expressing similar views passed by lumbermen and chambers of commerce all over the Southland. I can only say as I said on the coal tariff, and reiterate it more strongly—I can stand for no reduction in the tariff on lumber. I shall work against it and I shall vote against it.

IRON AND STEEL.

In approaching this subject I find it to be one of great interest, not only to my State, but to my home city. It must be remembered that our fuel has made it possible for West Virginia to take part in nearly every form of manufacturing known to the United States. In the matter of iron and steel, in Wheeling alone there are establishments employed in the manufacture of iron in 55 different forms. It runs from the Bessemer foundry and pig iron, steel ingots, billets, and nail plates down to hammock hooks, cotton, box, and floor hooks, and kettle bails. It is plain, then, that West Virginia feels a most vital interest in this metal schedule. When the matter of tariff was before the Committee on Ways and Means of the House, a meeting of the sheet-iron and sheet-steel manufacturers, exclusive of the United States Steel Company, was held, and a special committee on tariff appointed to present to that honorable body such information as the manufacturers had to give. Now, Mr. President, I know the gentlemen forming this association. I have seen their business enterprises grow from small beginnings until now some of them represent the largest independent plants in the world. I have met these gentlemen in business circles and socially; I know them to be men of the highest character; men whose word is as good as their bond; patriotic citizens, ready to meet the call of their country at any time. Knowing these gentlemen as I do, knowing that many of them have come up "from the ranks," started in the business as workmen where they are now part owners, I can not for one moment doubt the statements which they make and by which they stand. Such statements coming from them in a similar manner would be accepted in any court of justice, and it is not for me to question the integrity of every declaration they make, nor shall I stand idly by and permit anyone else to question them. These gentlemen represent an industry which sustains an annual pay roll of over $30,000,000, not all of it in Wheeling, but wherever their interests are located. In no branch of the manufacturing business are the workmen more intelligent and better paid. The approximate rate per day is $3, including men and boys. In their process of manufacturing, a highly skilled class of workmen is absolutely necessary, and nowhere than in the steel business is a larger percentage of English-speaking workmen employed.

I will not attempt to enter into details of the manufacturing of sheet iron and steel, of the domestic mill cost and freight, or of the foreign selling price and freight. It is sufficient for me to know that these gentlemen, whose integrity is above question, inform me that only a slight reduction in the Dingley tariff rates would be required to enable the foreign manufacturer to use our American markets for a dumping ground for his surplus production, thus displacing tonnage that otherwise would be made in this country. Should this be done, what is the result? Plain as day. It would be necessary for the domestic producer to make a reduction in his cost. What does that mean? Undoubtedly lower wages; not only of the workingmen employed directly in the mills, but those employed in the production of materials and supplies made by these sheet manufacturers. These manufacturers, concerning whom I am now speaking, are independent operators; men who are outside of the great United States Steel Corporation; one of these companies, as shown in a petition printed in the RECORD of April 22, starting as far back as 1852, and the proposed reduction in this bill seriously menaces all their interests. They have not facilities for the conversion of the raw material like the larger corporations, and it is a question of great moment whether independent operators will have an annual pay roll of over thirty-one millions of dollars or be forced into a situation involving most probably the life of their business. I insist, Mr. President, that these gentlemen know more about the cost of manufacturing sheet iron and sheet steel; know more about the profits; know more about the wages paid workmen; know more about the details of their business than any Member of this honorable body, and I stand to aid them if I can. It is better to leave well enough alone in this as well as in other things. The sheet-iron and sheet-steel business would be booming were it not for this tariff legislation. These gentlemen do not know what to do. It is true that facing a situation that may probably menace the life of the entire business they are willing to accept a reduction; they do not want it; they pray us not to give it to them; but if they must have a reduction they do not want such a reduction as the present bill gives. I have introduced an amendment, such as they are willing to take, and shall do my best to have it adopted.

But there is another feature in this metal schedule to which I desire to call attention. I am heartily thankful that the Finance Committee of the Senate has seen fit to change the duty on pig iron and scrap iron as it came to us in the House bill. It has done the only reasonable and sensible thing it could do in placing pig and scrap iron upon an equality. I do not stand for free iron ore and am glad to see a duty placed on it by the Finance Committee. Only a few furnaces would benefit from free iron ore, while the great majority would suffer. The price of pig iron is not governed by the furnaces near tidewater, but by the competition of various other furnaces in various other regions having the raw material near. We are not only interested in West Virginia because we have iron ore, but because we furnish coal to the furnaces which reduce this ore.

HIDES.

Mr. President, I have been dealing with subjects which affect the manufacturer and the workingman. I now come to one which is of exceeding importance to the farmer, not only of my State, but of the country. I stand for the farmer and for his products. He labors, and he should be rewarded; he should be protected; he is a part of the body politic and should grow as the rest of us grow. I do not want to see the cattle raisers of the United States in direct competition with South America and Mexico, where cattle and hides are produced by cheap labor on cheap land, by placing hides on the free list. So long as the tariff on leather shoes and manufactured articles of leather is retained no benefit can accrue to the consuming public by placing hides on the free list. A careful calculation of the additional cost added to the price of a pair of shoes on account of a duty on hides places it at less than 3 cents, so I am told. Suppose hides go on the free list, will this 3 cents be taken from the cost of a pair of shoes? To me the question seems preposterous. The answer is, No. As the years go by and our country is more densely settled the cost of raising cattle increases. It costs more to-day to raise cattle than it did fifty years ago, excepting, of course, where there were expenses of war times. Fifty years from now it will cost more to raise cattle than it does to-day.

I am told by conservative farmers and cattle raisers in West Virginia that should hides go on the free list it would amount anywhere from two to four dollars loss on every beef they put on the market. One cattle raiser who ships to our large home centers a great many cattle from one county alone in West Virginia advises me that if hides are put on the free list his loss alone, when shipping time comes this fall, will not be less than twelve hundred dollars.

And by the way, Mr. President, I want to digress for a moment and speak of the cattle raisers of Kanawha County. They are a most progressive class of men. One of them yearly exports to Great Britain some of the finest cattle that country receives, and I am told that such beef is considered a luxury when it is put upon the table of King Edward himself. These cattle are known throughout the British Empire and are sought in every British market.

Mr. President, is it not reasonable to suppose that such men as these know what they are talking about? With such testimony before me from such a class it is useless to argue that the farmer does not receive the benefit of a protective duty laid on hides. No one can force me to believe that the packers of the country are the only persons who benefit; no one can force me to think for one moment that the cattle raiser, the farmer, is not paid for his hides when he sells his cattle; no one can make it plain enough for me to understand that this Kanawha County man, this West Virginia cattle raiser, does not know his business, and is not right when he says that with hides on the free list he will experience a loss of $1,200 on his next shipment of cattle.

I do not suppose, Mr. President, that there is any occupation or profession in this country where more labor is exerted for a smaller net profit than in that of the occupation of agriculture. It is perfectly true that we have to pay large prices for the farmer's products in the markets in the city, but very little of this enormous price ever reaches the farmer. This is especially true of a farm State like West Virginia. We have there no great stretches of prairie land rolling for miles and miles and lifting up to the sunshine its acres ladened down with corn, wheat, and other agricultural products; we are in the mountains and we have to make the best of the advantages we have. So

I stand for the principle of protection in this as in the case of other articles, and if the duty is put back on hides I should say the duty on leather, in strict justice, should be treated with equal fairness.

WOOL.

During the last campaign it was my pleasure, as well as honor, to travel extensively through the State of West Virginia. The journeys I made were by rail, automobile, and in carriages. As I journeyed from one place to another over the hills and mountains of our great State, I was struck with the number of sheep I saw grazing on the hillsides. How different from a similar journey I took through the State in the years when Mr. Cleveland for the last time was President of this great Nation, when the so-called "Wilson tariff" was in effect. Then the hills were bare of sheep; so were the meadows. In fact, they were bare of almost everything else. In the years since the "Dingley bill" went into effect West Virginia has grown in its wool raising by leaps and bounds, and to-day one of the greatest sources of income to her farmers are the sheep literally on thousands of hills. As reported to the Senate by the Finance Committee, the "Payne bill" contains the Dingley schedule on tariff without changing "the dotting of an i or the crossing of a t." This satisfies me and satisfies my constituents. Before the measure was reported from the Senate Committee on Finance I was deluged with visits and with communications protesting against any change. The subject itself was one with which I was very familiar, and even I was surprised at the outburst of protests that came from all sections.

Three hundred woolgrowers of one county alone in West Virginia met in convention and passed resolutions urging me to vote against any reduction in wool. One hundred woolgrowers from another county petitioned to the same effect. And in similar tone from other associations in other counties, though many of the hills are covered with forests and catacombed with coal mines, came the prayer "Let the Dingley bill stand."

Should the wool schedule remain as it now is West Virginia will become one of the great wool-producing States. The wool it now produces is not of a cheap grade, but is of the best to be found anywhere. The sheep industry is now by no means what it should be, and as our forests are cut away it will be necessary to cover our hillsides with bluegrass and sheep in order to save them. We want the Dingley tariff rates. And not only is this the case with West Virginia, but it is the case with other States throughout the Union. From as far west as Wyoming has come to me, as undoubtedly to other Senators, petitions and communications asking us to leave well enough alone. We do not want another "Wilson bill" with its destructive woolen schedule; we want what we have now and want it badly.

OIL.

Mr. President, the longer I look into the schedules of this bill the more I see how closely interested West Virginia is in most of those dealing on large products. I am unable to go further without taking up the question of a duty on oil—a duty on petroleum. The people of West Virginia, and they are as intelligent as any class of citizenship in the country, think and demand that there should be a duty on oil. They do not hold that the Standard Oil Company is a great monster devouring alike the living and the dead. They see the development this corporation has brought to the State of West Virginia, and they desire that it shall be fairly treated. Look at it for a moment, Mr. President. To-day there are 13,000 oil wells in West Virginia being operated and as many wells dry, exhausted, and abandoned. These 13,000 wells are producing 25,000 barrels of oil per day at a value of $1.78 a barrel. In round numbers, that means seventeen millions come annually to West Virginians. To-day, under the assessment laws of my State, $76,000,000 worth of oil land is paying taxes; 9,000 men are directly employed in this business, and they are the liveliest, the most wide-awake, and progressive citizens we have in the State of West Virginia.

Mr. President, again I must ask whether the united testimony of 9,000 active, intelligent West Virginians, irrespective of party, is not worth more than the testimony of men who would scarcely know an oil well if they saw one? Do they not know where their oil goes, how it is handled, and who refines it? Why are these men appealing to me by letter, by telegram, and in person to help save this important industry from ruin and destruction? Are they, I repeat, Mr. President, to be given no standing in court? They know that the Standard Oil Company buys their oil. There the transaction begins and there it ends. They know that the Standard Oil Company is in the market to buy the best grade of oil at the cheapest figures wherever it can. They know that it makes but little, if any, difference to the Standard Oil Company whether there is a duty on oil or not. And they know, these independent oil operators, that the placing of crude oil on the free list means death and destruction to their business. Think of it, Mr. President! In West Virginia alone the 13,000 wells which are now in operation were drilled at an average cost of $7,500, amounting to nearly $100,000,000. Is this great investment to be swept away in the unthinking desire to punish a corporation? Remember that it is not this capital alone that is destroyed, but it is the livelihood of 9,000 men and their families which is also threatened. This, Mr. President, only in the State of West Virginia.

Sixteen States of this Union have an oil production. The Standard Oil Company is the largest factor in the oil trade. The market value of its stock to-day is $650,000,000; one-half of this, though, is absorbed in foreign plants handling American products in foreign lands; the remainder is invested in pipe lines and refineries. But remember that the Standard Oil Company produces less than 10 per cent of the crude oil of this country; the independent operators produce the remainder—the independent oil operators, a class of men made up of such individuals as I have described before. Remember that the aggregate value of the plants—the wells, if you choose to call them so—of the independent oil operators of the United States aggregate over $13,000,000,000. Remember to-day, Mr. President, that there are over 95,000,000 barrels of crude oil stored ready for use, the suplus production of the last few years, enough oil to keep the Standard Oil Company busy for over three years if not another gallon of oil was produced or another gallon of oil imported. This alone spells disaster to the independent operators of this great country. For three years their plants can be absolutely shut down. For three years not a gallon of their oil need be bought. For three years not a workman need be paid. For three years not a single cent of interest would be drawn on an invested capital. Is not this situation itself enough to cause every independent operator in West Virginia to appeal to his Senators to help save him from financial destruction and loss for three years?

But that feature, the three years of ruination, is pleasant compared to what will happen if oil is kept on the free list. To-day Mexican oil is pumped from wells drilled in cheap land, operated by cheap labor and of a quality that can be more cheaply refined. It lies right across our southern border; it is within the easy reach of water transportation. What, then, would be the result? The oil wells of West Virginia never again to flow; the hundreds of millions of capital swept out of existence; the thousands of workmen and their families forced to find the necessities of life somewhere else. Senators, this should give us pause! We should hesitate before passing a law which will bring such widespread destruction.

But the oil men alone do not suffer. All through West Virginia the banks and the business men are carrying oil securities. The ruin would be widespread. There is an old saying that it is better that "ninety-nine guilty men escape than one innocent one suffer." It may be the Standard Oil Company, the great octopus, that great corporation whose success has placed the entire land in danger, as so often claimed—it may be, I say, that it should be punished. If it has done anything wrong, if it has broken the laws, punish it; but do not ruin the independent oil operator of West Virginia and of the United States in an attempt to reach the Standard Oil Company.

Mr. President, I do not propose to let any populistic howlings influence me in what I conceive to be my duty in regard to taking care of the independent oil producers of my State. I have no way of knowing upon which side of the question the Standard Oil people stand. But I do know that the good Lord put oil under the rugged hills and valleys of West Virginia, and its production has ground, and is grinding out, good incomes for thousands of our people, enabling them to build comfortable homes, educate their children, and surround themselves with comfort. And I am for the producer, the actual producer, of oil in my State.

POTTERY.

I can not pass by another industry in my State and in the territory surrounding it, namely, pottery. The "Payne bill," as it was reported to the House, does not meet the necessities of this trade. As reported from the Finance Committee to the Senate, it has been changed for the better, but more changes are needed. The pottery manufacturers desire amendments to section 90 and a provision attached to sections 91 and 92, in Schedule B, providing that the ad valorem duty shall not be an amount less than a certain specific duty per pound. Why do they ask this and why do I most urgently second their request? Because, Mr. President, it is necessary for the very life of this great industry. Because, Mr. President, in my own home city one of the largest potteries in the country has been forced into bankruptcy on account of low duties and undervaluations on

imports. In earthenware and heavy chinaware the potters have been able, though working under very many disadvantages, to hold their own, so it is especially upon the white and decorated china that they ask for an increased duty, either specific or with such a provision as I have spoken of, added to sections 91 and 92. This has been necessary from the low labor cost of making this china abroad and the resulting low valuations at our ports of entry. The insignificant duties paid permit the importer to lay down German china, for illustration, at his warehouse in New York at about the actual cost of making American earthenware. Some special articles, such as sugar bowls, salads, and so forth, in German china, are freely marketed in this country at less than the first cost of producing to our American potteries. The two principal items of cost in all manufactured articles are labor and raw material. Between American and foreign raw material there is very little difference in the cost of same, but there is a great difference in the cost of labor. Figures which have been presented by the potters show that in a West Virginia pottery the average wages paid was $13.30 for one week, while the corresponding average wage in a German factory was $4.90. It has been shown that, taking the wages paid in America at $100, the average rates paid in England, Germany, and Austria, respectively, on the same article, were $60, $44, and $40.

In addition to this disadvantage, the potter of the United States labors under the added burden of never knowing with what he has to compete. Under an exclusively ad valorem schedule the duty on any given article will vary according to the scale of wages paid in the country where produced. For example, on a dozen cups and saucers may be paid a duty of 50 cents if made in England, while a dozen of the same identical value may pay but 40 cents if made in Germany, and only 25 cents if made in Japan. The duty is not fixed; it goes up and down as wages go up and down, and to me no other argument is needed. As to undervaluations, the Government in the past made every reasonable effort to verify values. Now the values seem to depend only on the conscientious respect the importer entertains for our tariff laws. I can do no better in this connection and on this subject than to quote the language of the president of the largest pottery in the world. It is located in the State of West Virginia. He says:

> The importer practically returns his own values for tariff taxation, and whether undervaluation is practiced to any considerable extent I am not going to positively assert. But the door is wide open; the opportunity is broad enough for a flexible conscience, and the temptation to at least evade the exact spirit of the law is probably greater than human nature is likely to resist in every case. It may be because it might be done so easily that we suspect so much. At all events, that suspicion is deeply seated and seems to be justified by the results of a good many test cases. However, it is not intended to specially accuse anyone, but rather to express the conviction that the majority of importers are conscientious in this respect. Yet we believe there are enough who are not conscientious to practically defeat the intent of the law.
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> It is clearly desirable to reduce that opportunity and temptation to undervalue to a minimum, and that may be partly accomplished by assessing a part of the duty upon a specific basis.

So, Mr. President, I have endeavored to point out some of the changes in this bill the business interests of the country demand. The business interests of West Virginia are identical with the business interests of other States. These are anxious to go ahead. Factories must be in operation, the mills must be running full, the farmer planting or reaping his crops, in one State as in all. All these benefits would be ours now had it not been for the uncertainty regarding this tariff bill. This is why I object to any revision. It is anticipation of cuts in duties that has upset our business conditions. The question of revision came up in 1905, and the demoralization of trade soon followed. It always does follow tariff tinkering. After this measure becomes a law I fear trade conditions will be unsettled for many months. Everyone will be waiting to see the effect it will have on different commodities; how the reduction will affect steel, iron, and all the great industries I have mentioned, and until this is known we can not look for the prosperity that we otherwise would have had.

The panic of 1907, it has been claimed, was responsible for a greater number of business failures than in any one of the years 1893–1895, during the Democratic administration, when that party had all branches of the Government. True, perhaps, in one sense, but the 1907 was a rich man's panic, and they were the losers, while the 1893, 1894, and 1895 was the poor man's panic, as he could not get work or anything to eat. It was the anticipation of the fact that the Democratic party was going to pass a new tariff bill in those years that brought this condition on the country.

I can not close my remarks without saying that I fear this bill will not be as satisfactory a tariff measure as the present law. We know what the Dingley tariff has done; we do not know what this will do. If it shall do as well, business and the country can be thankful. During the operations of the Dingley tariff bill there was not one idle man in America who was not voluntarily so. Labor was employed at a wage higher than any rate ever recorded in the annals of human history. Industrial enterprise was limited alone by the ability to secure men and materials. That labor received its fair measure of reward is shown by the increase in savings-bank deposits, which increased at a ratio never before known in any nation in any epoch. Until talk of tariff revision made it seem an assured certainty in legislation, there was not an idle factory, an idle wheel, or an idle man in the United States (summer of 1907). There was not an idle freight car in the Federal Union. Traffic was congested, and the railroads cursed by shippers because of lack of cars to move the manufactured products demanded by the people.

To-day the last reports show about 240,000 idle cars on side tracks waiting the word from Congress to set them in motion.

During the operations of the Dingley tariff the increased balance of trade in favor of the United States went by leaps and bounds, until, for the six years prior to this agitation for tariff revision, the balance of trade in our favor was greater in any six months than the entire favorable balance of trade in all the years from the Declaration of Independence down to the passage of the Dingley bill added up together (viz, that is, six months of favorable balance exceeded in amount the total of all previous years).

Prior to the passage of the Dingley bill our exports were confined chiefly to the products of agriculture. Under the Dingley bill we sent from American factories to foreign lands more than $500,000,000 in a single year, until the exports of our factories rivaled the exports of our farms.

With but 5 per cent of the world's population we furnish 32 per cent of the food products of the entire world. Who shall say, viewing the advancement of our industrial progress, that the same results were not working out in manufacturing supremacy? To my mind, tariff revision can serve no useful purpose except to check and hinder national development. To be useful you must revise so low that the foreign product can come in and displace the American products. Who dares demand this? In 1890 we made no tin plate, the high tariff on McKinley tin was ridiculed. To-day American tin-plate mills use more than three-eighths of all the block tin produced on the globe. The tariff lowers in the end the cost to the ultimate consumer and eventually cheapens the cost of every necessity of life.

Mr. GORE. Mr. President, I desire to ask a question of the Senator from West Virginia. I was very much impressed with his remark that a reduction of the duty on coal would shipwreck that industry, not only in West Virginia, but in four or five States of the country. I am certain that no Senator on this side, and that no Senator on either side, desires to wreck any industry in any State or section of this country. The dominant party in their platform last summer promised to revise the tariff on the principle that the rate should cover the difference in the cost of production in this country and in the other commercial countries of the world, plus a reasonable profit to the manufacturer. I do not subscribe to that principle, nor did the Republican party ever proclaim the latter part of that principle prior to their last platform; but that was the sovereign decree of the American people, and I have been willing to cooperate in good faith with Senators on the other side in an effort to redeem that pledge.

It seems to me that the only way to proceed in accordance with their platform is to ascertain not merely the difference in the rate of wages here and abroad—for that is not the true standard—but to ascertain the difference in the labor cost of the various articles comprised in these tariff schedules.

As I remember, the prevailing duty on coal is 67 cents. As I am informed, the Pocahontas mines, in the Senator's State, are the greatest mines not only in West Virginia, but in the United States. Our navy uses the coal produced in those mines, and that coal is used as the standard for testing the heat-producing capacity of all other coals in this country. As a practical matter, I should like to know what are the prevailing rates of wages in the Pocahontas mines to-day?

Mr. SCOTT. Mr. President, I can not offhand give the information the Senator desires, but I will promise him that I will do so at a very early day.

Mr. GORE. Mr. President, I would say that I was conversing with a mine expert a few days ago who is familiar with conditions in that section and in those mines. He advised me that the rates of wages paid now in the Pocahontas section are 75 cents per car, consisting of about 3 tons, making the wages in the neighborhood of 27 cents a ton. The duty on foreign

coal is 67 cents per ton. I was merely wondering whether that was sufficient to protect the miners in the State of West Virginia.

Mr. SCOTT. Oh, Mr. President, the Senator is mistaken and his informant was entirely incorrect in making a statement of that kind. I appeal to my colleague [Mr. ELKINS], who is himself a producer of coal, in regard to the price paid for wages.

Mr. GORE. I should like very much to hear the senior Senator from West Virginia, as I have no desire to misstate the facts.

Mr. ELKINS. Mr. President, if the Senator from Oklahoma will allow me, I will say that the mining of coal is generally paid for by the ton or by the wagon, as the Senator says. I take it the mine to which he refers is the Pocahontas mine, in Virginia.

Mr. GORE. The town is in Virginia, but the mines, as I understand, are in West Virginia.

Mr. ELKINS. We have a great many mines in West Virginia in the Pocahontas region. The miner makes about 50 cents a ton, generally. In some localities, where the vein is very thick and easily mined, the rate is less. It might be as low as 40 cents a ton for digging the coal, or breaking it down in the mine. In estimating the cost of mining per ton there must be added the expense of getting the coal from the mine to the railroad car that takes it to market. This will average 30 to 35 cents per ton.

Mr. SCOTT. Where there is a 12-foot vein the rate is less than for a 1-foot vein.

Mr. GORE. That measures the wages. I understand that in certain parts of West Virginia the wages are 50 cents and even as high as 56 cents; but in the best mines—and I take it that my authority is pretty reliable, especially as the Senators from West Virginia do not remember——

Mr. ELKINS. I want to answer the Senator more definitely. I think I am familiar with the subject. The usual wages to the miner is, say, 50 cents a ton, but that is not all the cost of mining.

Mr. GORE. I understand that; but I am driving at the wage.

Mr. ELKINS. The labor of hauling and getting the coal from the mine after it is loaded on the mine car to the mouth of the mine and then dumped into the railroad car must be added to that. This is all added to the cost of mining. The cost of mining is 80 to 87½ cents per ton, and often a dollar a ton, at the mine. Usually in West Virginia the cost of mining is from 87½ cents to $1 per ton; in Pennsylvania and other States more.

Mr. GORE. I will ask the Senator from West Virginia what is Pocahontas coal selling at now?

Mr. ELKINS. It is owing to where you sell it. Does the Senator mean at the mine?

Mr. GORE. Yes, sir.

Mr. ELKINS. I think in these dull times it is bringing not more than a dollar to a dollar and 10 cents at the mine. In these hard times and general stagnation the coals of West Virginia are not bringing $1 per ton at the mines. For two years the coal operators have made nothing.

Mr. GORE. My understanding is it is less than a dollar.

Mr. ELKINS. Coal from the Pocahontas region is the best coal probably in the country or as good as any produced anywhere. The usual profit of mining to the operator is 12 to 15 cents a ton. The cost of mining in this country is almost double what it is abroad—double what it is in Great Britain and nearly three times the cost of mining in Belgium or Germany.

Mr. GORE. In this connection I should like to ask the Senator——

Mr. SCOTT. If the Senator will allow me for a minute, he can readily understand that the rate per ton for mining coal varies in different localities. For instance, where you have a 12-foot seam the rate is very much less than where you have a 4-foot seam; and then again where you have a strip of slack or fire clay dividing the veins of coal the price becomes higher. I should say that the cost of mining coal in Virginia varies anywhere from 40 cents to 90 cents.

Mr. GORE. I am perfectly aware that the rate varies, and that there are many other elements in the cost of the production of coal; but I repeat, for the present at least, that I am reliably informed that the rate of wages paid for producing the best coal in this country is much less than that paid in Nova Scotia or England, and I merely suggest that because it is the basis from which we ought to figure and upon which we ought to revise the tariff, and it is the only basis upon which we can revise the tariff and redeem the pledges made during the past campaign. I shall——

Mr. ELKINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Oklahoma yield to the Senator from West Virginia?

Mr. ELKINS. I thought the Senator from Oklahoma had finished his remarks.

Mr. GORE. I will have occasion to allude to that later.

Mr. ELKINS. I wish to correct an error into which the Senator has fallen. The cost of mining in Nova Scotia is less than in West Virginia and Pennsylvania. The same is true of the cost of coal in British Columbia and Vancouver.

Mr. GORE. Does the Senator mean the rate of wages?

Mr. ELKINS. The rate of wages in British Columbia and Vancouver is less than in the United States. There it is often Chinese, Hindoo, and cooly labor.

Mr. GORE. What is the rate of wages there, and what is the rate of wages in the Pocahontas country? That is what I am alluding to.

Mr. ELKINS. They are from 30 to 50 per cent less in British Columbia and Vancouver than in the United States. In Nova Scotia the labor is nearly the same; probably 15 per cent less than in West Virginia. But to this must be added the cost of transportation to the market. The Nova Scotia mines are very near to New England and located near the sea. Their haul to the sea is only about 12 miles from many mines—the largest mines. The water freight is 40 cents per ton to Boston, while railroad freight from the mines to the sea is only about 15 cents per ton, making the total freight about 65 cents.

Mr. President, the average haul from the West Virginia mines to New England is 400 miles by rail and 600 to 700 miles by water. We have to pay $1.40 railroad freight and 70 cents water freight. This is $2.10 added to the cost of mining. Suppose the cost in Nova Scotia of mining a ton of coal were the same—80 or 90 cents, as in West Virginia. The transportation by rail and water is about 65 cents or 70 cents, as against $2.10 for West Virginia's coal. Call mining in Nova Scotia 80 cents per ton; transportation, 65 cents; and the cost of a ton of coal in Boston would be about $1.45, while West Virginia coal would be about $3 per ton in Boston. From this you can imagine what would be the result of having free coal between the United States and Canada. The removal of the 67 cents tariff would flood New England with Nova Scotia coal. Already we are importing large quantities of coal, notwithstanding the duty of 67 cents. Nova Scotia mines 5,500,000 tons of coal, and a great part of its importation, seven or eight hundred thousand tons into New England, comes in as slack and pays only 15 cents a ton.

Mr. SCOTT. The bulk of it.

Mr. ELKINS. The larger part of it. The Nova Scotia mines are not opened and developed yet. They have just recently been exploited. In ten or fifteen years the production of the Nova Scotia mines, right across the border from New England, will be fifteen or twenty million tons; and my judgment is that if the tariff is removed, owing to the difference in the cost of mining and transportation, the market for West Virginia and eastern Pennsylvania coal will be taken away from us and go to Nova Scotia. The Nova Scotia mines furnish now all the coal used in Canada east of Montreal, about 5,000,000 tons, which is all they can mine, and these mines are in their infancy. The coal is better than people think. It is used for domestic purposes, and by the railroads, factories, mills, and plants. They get all their coal from Nova Scotia mines. If this coal is good enough for Canada, why is it not for New England? Already purchasers are waiting for free coal to buy coal lands in Nova Scotia.

Mr. GORE. I merely wish to make one observation, because I do not desire to have the issue confused. I am perfectly aware of the difference in wages between this country and foreign countries. There is a great deal of coal mined in Oklahoma, and the prevailing wage there is 72 cents a ton. The rates in West Virginia, as I understand, vary from 27 cents to about 50 or 56 cents per ton. There are also many other elements to be considered. But the standard set for the revision of the tariff is the difference between wages here and abroad, plus a reasonable profit, and I am still of the opinion, until the Senator cites authoritative statistics showing the exact wage per ton in Nova Scotia and in England, that the ruling rate in the Pocahontas region is less than the ruling wage in those countries.

Mr. ELKINS. The Senator ignores the transportation feature there, and he is too low in the cost. Pocahontas coal in West Virginia costs from 75 cents to $1 a ton at the mouth of the mine. That is authentic. If the Senator desires, I will get letters from the operators to prove what I say.

Mr. GORE. You do not mean——

Mr. ELKINS. Pocahontas coal is not all the coal of West Virginia. I know of my own knowledge from every day's business that coal in West Virginia costs 90 cents to $1 per ton to mine. Under the most favorable circumstances it costs 85 cents.

Mr. GORE. You do not mean that the wages are 85 cents a ton?

Mr. ELKINS. I am talking of what enters into the cost. First is the mining, then what we call "outside labor," and the operation of the machinery, engines, tipples, etc. The cost of mining or digging the coal is from 50 to 60 cents a ton, and all the other items bring it up to 85 cents and more.

Let me tell the Senator what a miner gets in West Virginia: If he is industrious and works hard and reasonable hours only, he makes from three to four dollars a day. If he has a boy with him as an assistant, he often makes $6 a day. It is the best paid labor that I know of. When you consider it from the standpoint I have just stated, it is three times as much as the miners get in Europe and largely greater than is paid in Nova Scotia or any part of Canada.

Mr. GORE. Mr. President, that is the ordinary sophistry with which this question is discussed. The Senator suggests that the miners make from five to six dollars a day, and that is exactly why the American laborer receives higher wages than the European laborer—because he does more work and earns more pay. The superior wages paid to the laborer in this country are due to his superior intelligence, his superior skill, and his superior efficiency, and are not due to the rate of tariff tax; and it is a discredit to the American laborer to ascribe his superior wages to a protective tariff or to the Republican party when those wages and his prosperity are due to his own energy and his own intelligence. He earns more pay, and that is the reason why he receives more pay. [Applause in the galleries.]

The VICE-PRESIDENT. Occupants of the galleries are again admonished that they must indulge neither in signs of approval or disapproval of anything said on the floor of the Senate.

Mr. SIMMONS. Mr. President, I desire to give notice that at an opportune time to-morrow I wish to submit some remarks upon the wood schedule, especially on the subject of lumber.

Mr CLARK of Wyoming. Mr. President, it is not my purpose to attempt to enter into any discussion of the coal schedule. However, I can but have the reflection that a fair consideration of the schedule must not depend upon what may or may not be the prevailing rate of wage in a particular field or mine. I am unable, from my own knowledge, to state what is the rate of wages in the Pocahontas field. I have, upon the one hand, the distinct statement of men upon this floor who are closely associated with that business and who ought to know. I have, upon the other hand, the statement of government experts, which the Senator from Oklahoma well cites. But I am perfectly conscious of the fact that of all the wild guessing that is done on the cost of production in this country, the wildest guesses are made by government experts.

But I want to call the attention of the Senator from Oklahoma to the fact that in gauging the coal schedule or any other, it should depend upon the industry as a whole. I will say to the Senator from Oklahoma what I think he well knows, that in the State which I represent in part upon this floor an important product is that of coal, and in that young State we pay the highest rate of wage to the digger of coal that is paid in any State the sun shines upon, and I do not want to see those wages reduced.

I will say further to the Senator that if the Payne bill as it came to this House should become the law, it would put out of commission one-half of the mines in the State of Wyoming. I am speaking of the local situation there. I do not assume that it alone shall govern this body, but I assume that the Senator from Oklahoma and others in considering the coal schedule will judge the necessities of the case by a broader view than that of any particular field or mine.

Mr. McCUMBER. Mr. President, the Senator from Oklahoma [Mr. GORE] expatiated to a considerable extent upon the superior skill and workmanship of the American miner, and attributed the higher wages of the American miner entirely to the fact of superior workmanship. I think the facts are, and that he will find them to be, that from one-half to two-thirds of the miners are of foreign birth. When did those people become so wonderfully more expert, so wonderfully more intelligent than they were before they crossed the ocean? Is it the wonderful intelligence they got in crossing 3,000 miles from Russia, from Roumania, from Italy; or is it the conditions in this country that enable them to receive the higher wage for a given amount of expended energy?

Mr. GORE. Mr. President——

The PRESIDING OFFICER (Mr. GALLINGER in the chair). Does the Senator from North Dakota yield to the Senator from Oklahoma?

Mr. McCUMBER. Certainly.

Mr. GORE. Does the Senator from North Dakota mean to intimate that under the reign of the Republican party the pauper labor of Europe, from Russia, from Roumania, have been allowed to come here and occupy our mines when the only purpose of the Republican party in politics and the only apology for its existence are to protect the American laborer against the pauper labor of the Old World? Am I to understand that?

Mr. McCUMBER. Since this became a free government our gates have always swung inward. We have never turned those gates against an honest man, against a competent man, let him come from whatsoever country he sees fit if he is of the Caucasian race. Under our laws we have allowed about a million foreigners to come here yearly. Those men come here and in a short time they become, as a rule, good American citizens. They have increased the population of the country. They have helped to develop the country. They become as good American citizens in a few years as the old stock. We welcome the good to-day, as we did forty and fifty years ago; and I do not think the Senator from Oklahoma is in favor of saying that this country shall now take the position that the Caucasian race, as well as the yellow race, shall be prohibited from entering into the citizenship of this great country. The very best of our population have come from northern Europe. We can not make one law for one country and another law for another country. We get a superior citizenship, in my belief, from the northern part of Europe than we do from the southern part of Europe, but if we had adopted any policy which said to the Scandinavian, to the German, to the Irishman, or to the Scotchman, "You are not welcome to this country," we would have retarded a great deal the development of this country.

Mr. President, the only point I desired to make in answering the proposition of the Senator from Oklahoma was that it is not the superior intelligence of the American laborer per se, but it is the superior opportunity of the American laborer to earn a good salary.

Mr. GORE. Mr. President, I am unwilling that the Senator from North Dakota should place me in the position of opposing foreign immigration of a desirable character. We are an exotic people. Our ancestors had their homes in the Old World, and they sought refuge in the New World. This country has always been and this country should always be a house of refuge for the persecuted of every creed and the oppressed of every clime. Our gates have always stood ajar to receive the foreigner who comes to our shores to identify his interests with our interests and to share the prosperity and the glory of our institutions. Such immigrants have always been and such immigrants should always be as welcome, I may say, as the flowers of springtime and as welcome as the fruits of summer. But, sir, the opening of foreign prisons and foreign brothels to sweep the offscourings of the earth into the lap of this glorious Republic should not be permitted, and for my part I would discriminate between the desirable and the undesirable immigrants. I would say to certain Europeans, as we say to certain Asiatics, and as we ought to say to all Asiatics, "Thus far shalt thou go, and no farther."

The Senator from North Dakota has stated one of the reasons for the superior wages in the United States. It does depend in great measure—and I wonder if the Senator will deny it—upon the superior skill, superior intelligence, and superior efficiency of the American laborer. Is the Senator from North Dakota willing to stand here and deny that the superior wages in this country are due to the superior fitness and efficiency of our laborers?

Mr. President, he states another reason why wages are higher in the United States than in foreign countries.

Mr. McCUMBER. Will the Senator yield to me right at this point?

Mr. GORE. Certainly.

Mr. McCUMBER. I will ask the Senator from Oklahoma if we did not have the same superiority of American labor from 1894 to 1897 that we have had since that time, and is it not a fact that notwithstanding the superiority of that labor, one-third of them were tramps upon the face of the earth and the other two-thirds were receiving only a sufficient amount to live from hand to mouth? Is not that the fact; and had the superiority of American labor anything to do with the situation at that time?

There was just one thing, and that was the Wilson-Gorman tariff bill, which immediately sent one-third of our mills down to dust and closed the doors of half of the others; that gave labor one-half the opportunity and earning power that it had before; and then American skill and American intelligence counted for nothing. They did not help labor in tramping about the country seeking labor.

Mr. GORE. Mr. President, I have listened to that inquiry from the Senator from North Dakota with mingled feelings of gratitude and disappointment. The Senator from North Dakota is one of my favorites, if I may be allowed to discriminate, in

the membership of this splendid body. I have heard much upon the stump and little in the Senate with reference to the distress and adversity that prevailed in the early nineties. Sir, I hardly expected to hear that argument from the usually candid Senator from the State of North Dakota.

Now, sir, he ascribes, as many Republican stump orators ascribe, the distress in those times to the Wilson-Gorman bill. I have never been diposed to deny that the Republican party was able to work miracles. I am willing to admit that it can repeal the law of supply and demand; nay, more, sir; that it can reverse the fundamental canons of logic and can make the effect precede the cause. Now, sir, when did the Wilson tariff bill become a law? The 28th of August, 1894. When did the panic occur? On the 12th of May, 1893, it began in this country. There is nothing astounding, Mr. President——

Mr. SCOTT. Will not the Senator admit that anticipation of the action of his party in the revision of the tariff brought it about?

Mr. GORE. I am willing to follow that Senator and all other Senators when they quit the realm of fact and speed away into the heavens of speculation. I am willing to admit that if the Senator is willing to admit that the panic of 1907 was attributable to the same cause. I am willing to admit that if the Senator from West Virginia is willing to admit that the panic of 1873 was due to the same cause, a panic which occurred under a Republican President and under a Republican protective tariff.

Mr. President, that is speculation. It is unfounded, but fortunately it can be disproved. The panic of 1893 was not local to the United States. It affected all the commercial nations of the earth at practically the same time and in varying degrees. It is not so strange that a Democratic measure passed in August, 1894, should have precipitated a panic in the United States in May, 1893; but it is passing strange that a Democratic measure passed in August, 1894, should have precipitated a panic in Australia in January, 1893. One year and eight months before the enactment of the law in this country the first climax occurred in the distant Commonwealth of Australia. It had been gathering force and strength for two or three years preceding.

Mr. President, we had a stringency in 1890 under which many millions of clearing-house certificates were issued, and during the presidency of President Harrison.

The coil was gradually tightening. It explains why, in 1890, the dominant party returned only 88 Members to the lower House in the congressional election. The coil was gradually tightening, which explains why, in 1892, such stalwart Republican States as Wisconsin and Illinois were swept into the Democratic column. Plates were prepared for the issuance of bonds, about which we have heard so much eloquence from the other side of the Chamber, during the presidency of Mr. Harrison. He was prevailed upon by his friends not to make the issue. When Harrison came into office, succeeding Cleveland, he found a surplus of something like $100,000,000. When, four years later, Harrison turned over the administration to Cleveland, we had practically an empty Treasury. The crisis had already commenced. The stringency was felt not only here, but in all the commercial nations of the earth. We shared in that depression, and it was in no measure attributable to the Wilson bill, which was to be enacted some year and a half later; and I had almost said that nobody except the Senator from West Virginia and the Senator from North Dakota would ascribe the stringency to the prospective enactment of the Wilson bill. That is the sophism with which they have enlightened the people of this country during the years gone by.

Mr. President, I had not intended to precipitate myself into this discussion, but there is one other point which I must make in this connection. I am justified, in my opinion, as to the superior wisdom of the Senator from North Dakota. He says it is the superior opportunities in the United States which are in great measure responsible for the high wages. I rejoice that he has made that admission. It explains the prosperity here. Other Senators and Republican speakers generally have ascribed all of our prosperity to the talisman of the tariff.

The Senator from North Dakota correctly ascribes it in some measure to our superior opportunities; to the fact that we are a new country, that our resources are varied, are opulent, and are undeveloped; to the fact that the demand for labor is great relatively and the supply of labor is relatively small. That law is as universal as the principle of eternal truth. Combined with our superior intelligence, the superior wages paid here, as compared with the wages paid in other countries, is thus explained.

Other Senators have indicated that resources count for nothing, that development counts for nothing, that intelligence counts for nothing, that taxes are omnipotent, and that our blessings increase with our burdens. That has been the philosophy of the Republican party.

Why does Germany, with her pauper labor, feel constrained to protect herself against the higher paid labor of the United States?

Mr. President, only about one twenty-ninth of the laborers in the United States are employed in protected industries. I make that statement not upon my own responsibility, but upon the authority of Edward Atkinson, than whom this country has known or acknowledged no greater statistician. Twenty-nine million people were engaged in gainful pursuits by the census of 1900, and one million were engaged in those pursuits which derive some benefit, direct or indirect, from a protective tariff. We tax 29 laborers to pay the higher wages, under their theory, of 1 laborer.

Mr. President, according to the official report of Carroll D. Wright, carpenters in the United States receive about twice as much wages as in England, about three times as much wages as in France, and about four times as much wages as in Germany. Is there any tariff upon carpenters? The same is true of stone masons and bricklayers. Is there any duty on stone masons or bricklayers? It is not only true in those lines, but it is true in all lines in the case of those who receive no protection, either directly or indirectly, from this glorious and beneficent protective tariff.

Our superior opportunities, our great diversified resources, our progressive and enlightened labor constitute the reasons for our superior wages; and the Republican party is not a wet nurse to the laborers of this country. Neither is the protective tariff the fountain from which all blessings flow. Ascribe the credit where it belongs.

Mr. SCOTT. Will the Senator allow me to interrupt him?

Mr. GORE. Surely.

Mr. SCOTT. I should like to ask the Senator if he has a copy of the speech he made in 1894, when he was a Populist? I would like to have him rehearse a part of it.

Mr. GORE. Mr. President, I have a copy of that speech, and I refer to it with a great deal of pride and gratification. It reminds me that with increasing years I have grown wiser. [Laughter.] And I trust it is not too late for the junior Senator from West Virginia to profit with his accumulating years.

I criticised Mr. Cleveland's administration then and, Mr. President, I criticise it now. I have never yet commended the Democratic party when that party was wrong, and I have never condemned the Republican party when that party happened to be right, and I never shall. Higher principles and loftier purposes should guide every man in his political policies and in his duties to the people of this country.

That was a good speech. In that speech I criticised the Wilson tariff measure, but not for the same reason as the Senators on the other side. They condemned it as a free-trade measure. I condemned it because the reductions were not sufficient. I was honest in my criticism then, as I am of this measure, and I reserve to myself the liberty of criticising every party when that party is wrong. I commend to the junior Senator from West Virginia the same disinterested policy.

Mr. President, as I said, I had not intended to embark upon this discussion, but I shall take occasion to allude to these subjects hereafter.

Mr. ELKINS. Mr. President, I wish to correct the Senator from Oklahoma as to a matter of fact. In the first Cleveland administration it is true that there was substantial prosperity; we had a Republican Congress, and no hostile legislation could be enacted. In fact, in the way of passing any new legislation he was entirely powerless. In the second administration of Mr. Cleveland, when bonds were sold, there was a Democratic President and a Democratic Congress. The Democratic party was in full control of the Government and both Houses of Congress, with all sorts of threats and rumors about free trade and changes of policies. It was then the Wilson free-trade bill was passed.

The charge that the Harrison administration at its close was bankrupt is not sustained by the facts. At the close of the Harrison administration business began to suffer and languish because of the fact that this country had elected a Democratic President upon a free-trade platform or with free-trade tendencies, and the Congress chosen was Democratic, on the same platform. This filled the business world with alarm, and general stagnation set in before Harrison went out of office. This alarm began to empty the Treasury even before Cleveland got in. It continued at such a pace that bonds had to be sold by Mr. Cleveland in the beginning of his administration, and I am sorry to say that United States bonds which sold in the market for 113 and 114 were sold at 104 by Mr. Cleveland under

a private contract with bankers to provide funds to pay the ordinary expenses of the Government and replenish the Treasury. In the Senate, because of a resolution introduced by myself, and passed, President Cleveland was prevented from selling another issue of $200,000,000 of bonds at private sale, but sold them, after due advertisement, at public sale, and 113 was realized for those bonds, which a short time before sold under a private contract made by Mr. Cleveland for 104, a difference of nine points, or $9, on every hundred dollars of bonds sold, the bankers making on the transaction about $6,000,000 commission. This was a great loss to the Government, and one of the great mistakes of the Cleveland administration.

I make this statement in order that the matter may be placed in history and before the country in a way that is right and absolutely true. The Harrison administration was prosperous and successful up to and until the time when it was known that Cleveland and a Democratic Congress were elected; then the trouble in the business world began and continued. Harrison never sold a bond, and no Republican President had ever sold a bond, to meet the ordinary expenses of the Government. Mr. Buchanan was the only Democratic President before Mr. Cleveland, a lapse of forty years. I have not language at my command to describe as strongly as he did the disasters, the misfortune, and the ruin that came upon the country under his administration. The great panic of 1857 occurred in the beginning of his administration and lasted until our great war.

The administration of President Harrison was one of the most successful in our history, and he was one of the wisest, purest, and ablest Presidents the country has ever known.

Mr. BAILEY and Mr. McCUMBER addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from North Dakota?

Mr. McCUMBER. Will the Senator from Texas yield to me for just a moment? I know the Senator is desirous of going on with his address, and I shall take only one moment.

Mr. BAILEY. Very well.

Mr. McCUMBER. Mr. President, I always love to hear the Senator from Oklahoma [Mr. GORE] express his views upon any subject. I know the sincerity of his nature, and I have confidence that everything he says comes entirely from his heart.

Nothing is more gratifying than to have the Senator say that he has grown wiser from year to year; that he stepped out of the Populistic party and into the Democratic ranks. I admit, Mr. President, that that was a good long step in advance. As the Senator has shown his ability to advance onward and upward, I think we can look only a few years ahead when he will take the next great advance step and come entirely into the Republican party. [Laughter.]

I wish to say only one word about the two panics. The history of this country shows that panics arise from two principal causes. One cause is the dire poverty of the people. That was the cause of the panic in 1893. The other cause comes from overspeculation, which always results from very prosperous conditions. This country has never seen in its history a condition of prosperity that would equal the years from 1897 until 1907. Under the influence of those prosperous conditions speculation ran riot, and we expanded beyond any reasonably justifiable hope of the future ever responding to the advancement and expansion during that period. In those conditions we borrowed heavily. A time of payment must come. That time of payment did come, and found us unable to meet the conditions of the wonderful expansion at that period.

The crisis of 1907 came upon us when every mill was working at its full capacity. The crisis of 1893 and up until 1897, because it was a continuous crisis, was when one-third of our mills were closed and the other two-thirds were producing only about one-half of their annual output.

The Senator says that this condition was a world-wide condition, and he says that it did not happen until 1894, after the Wilson-Gorman tariff law. Mr. President, when the polls were closed in November, 1892, the American people knew what they were coming to, and we immediately began to feel the results of that condition. We never got out of that condition until we elected a Republican Congress and the policy of the Nation was outlined in the period which preceded that election; and the moment that we adopted the new tariff bill we saw a prosperity, as I have said, that the whole world had never seen before.

Now, was the condition from 1893 to 1897 world-wide? Mr. President, Great Britain was more prosperous during those four years than she had been for the four years preceding that time. Why? Simply because in 1892, the last year of Harrison's administration, the balance of trade between Great Britain and the United States was $343,000,000 in our favor. The very next year after the Wilson-Gorman bill that was reversed and the balance in her favor was $126,000,000 in her dealings with the United States, or a difference of about $500,000,000. That $500,000,000 in the trade of Great Britain with this country in her favor made her prosperous. That $500,000,000, a half a billion dollars, against us, made our laborers paupers. That was not a world-wide condition by any means.

Now, Mr. President, I think the Senator must in all candor yield his proposition that the superior earning capacity of the American laborer depends entirely upon his superior skill and intelligence, and, I may add, to be perfectly candid with the Senator, as he expressed it, the superior opportunities in this country. There were the same mills, there were the same undeveloped resources in this country from 1892 to 1896 that there have been since that time, and yet, notwithstanding his superior intellect, if I may agree with the Senator, and his superior workmanship, the American laborer was a vagabond on the face of the earth.

Mr. President, I hope the Senator will not insist that we can make the American laborer well to do unless we give him the opportunity to develop those resources of the country, which opportunity we have given him in the last few years.

I can call the Senator's attention to another fact in my own part of the country. I can remember when upon our farms in 1893 oats were sold for 10 cents a bushel, delivered in the elevators or on the cars. The average price of our wheat was from 35 cents to 60 cents a bushel out on the farms. Our corn was worth from 25 cents to 30 cents a bushel. We did not raise, on the average, any more during those four years than we have raised upon the average during the last eleven years, and yet we have almost doubled the value of every one of those products. It is not due entirely to the question of foreign demand, because when I look over the statistics I find that from 1893 to 1896 the average consumption per capita of the American people of wheat was less than 4 bushels, and I find that in the last ten years the average has been about 6 bushels, or almost twice as much. That has had very much to do with the price of our products since that time. So I can take up every other farm article that has been produced in the United States.

The whole question is a question between prosperity and stagnation. A low tariff, a tariff that is not a sufficient protection, gives us stagnation. The other gives us a reasonable degree of prosperity. That is the only distinction there is between Democratic and Republican policies.

Mr. GORE. Mr. President, I should like to remind the Senator from North Dakota that we have had during the history of this Republic a number of intervals of high tariff and intervals of tariff for revenue only, and during each and every period the advancement of this country has been practically uninterrupted. Wages in the United States have been as much superior to European wages during our low-tariff epochs as during our high-tariff epochs.

I cite as high authority as Mr. Blaine for the statement that during the decade from 1850 to 1860, or, rather, during the ten years following the enactment of the Walker tariff law, this country enjoyed unexampled progress and prosperity. Mr. McKinley makes the same admission, and seeks to find other causes than the tariff for revenue only. I remind the Senator that from 1850 until 1860 our population increased only 35 per cent, and our national wealth increased 126 per cent during the "ruinous and disastrous free-trade policy." I believe that no decade has shown an equal measure of progress, prosperity, and increase in national wealth as the decade following the enactment of the Walker tariff law.

Now, if free trade or if a tariff for revenue only is an unfailing cause for hard times and distress, how does the Senator explain that epoch of abounding good times and prosperity? He has failed to explain the panic of 1873, and again I present it before his eyes.

Let me observe that the stringency in England did occur somewhat previous to the panic in 1893 in the United States, and I must challenge his record of her golden prosperity. The Baring Brothers failed in England, I believe, in November, 1890, and for several years following stagnation prevailed in the United Kingdom. The shock was universal; every commercial nation felt the shock resulting from the failure of the Baring Brothers. It broke out in violence, as I have already observed, in Australia in January, 1893, prior to its occurrence in the United States. Prosperity returned to the other commercial nations, but not exactly at the same moment. The prosperity which has abounded here during the last ten years has, with only occasional interruptions, abounded throughout the commercial world, and the stringency which occurred in October, 1907, had its response and its sympathy throughout all the commercial and enlightened nations of the world.

Mr. President, I would say to the Senator that wages in the United States, where wages were paid during the disastrous

times of 1893 and 1894, were superior to the wages in England, Germany, and France. That panic occurred while the McKinley tariff law was in full force and effect—the very perfection of a protective tariff. And I would say to the Senator, and to other Senators who have alluded to the topic, that the deficit in the Treasury occurring during those times in 1893 was attributable largely to the McKinley tariff law. The avowed object of the McKinley tariff law was to dispose of the accumulation of the surplus and to reduce the revenues of this country. The title of the McKinley law was "An act to reduce the revenue." It succeeded far beyond the hopes and expectations of its authors, and precipitated this country in a panic, the responsibility for which has been laid upon the doorsteps of the Democratic administration.

The Senator alludes to low prices for wheat and oats. If my recollection is right, corn sold lower in the United States in 1889 or 1890 than it ever did before or than it ever did since.

Senators on the other side allude with much pleasure to the smoke appearing from the smokestacks of this country during the prosperity under Republican administration. That smoke from the chimneys of the distressed farmers in Kansas bore the odor of burning corn, because they were unable to purchase fuel and unable to sell the products of their farms for a sufficient price to purchase the absolute necessaries of life.

The Senator says that the price of oats and wheat was low in 1893, under the McKinley tariff law. I have forgotten the figures, but I have heard the Senator say, if I remember correctly—and I have great respect for his authority upon the subject of agriculture—that the price of agricultural products in the United States is fixed by the price of the surplus sold in the markets of Europe.

Was the tariff law enacted in 1894 responsible for the state of the market in Liverpool in the fall of 1893? Shall we be held accountable for all the sins of all the earth? High prices, he says, have prevailed during the last ten years, and I rejoice in these golden prices. Has not the state of the foreign market had something to do with the higher prices? Is his party, is his tariff, responsible for high wages and high prices? Do they ascribe to themselves the bounties of nature and the generosity of Providence? Have the state of the foreign markets, foreign laws, foreign prosperity nothing to do with the condition of the people in the United States?

I am sorry, I say again, to have been drawn precipitately into this discussion.

Mr. BAILEY. Mr. President, when I yielded yesterday afternoon for a motion to adjourn, I was about to enter upon the task of vindicating, so far as I am able to do so, the constitutionality of an income tax levied without apportionment among the several States. Whether such a tax is valid or not must depend, of course, upon whether or not it is a direct tax within the meaning of the Constitution. The men who framed our Constitution perfectly understood that there was a distinction between direct and indirect taxation. Indeed, they understood it so well that the word "direct" was inserted upon a second thought and to meet an objection to which the provision would otherwise have been amenable. But, sir, I am well within the truth of history when I say that while there may have been some delegates in the convention of 1787 who could have classified the objects of direct and indirect taxation, there was not one of them who attempted to do it.

It will not do to say that the question was so plain that nobody attempted to explain it, for we know that it was a matter of doubt to at least one conspicuous member of that assembly. The Hon. Mr. King asked what was a direct tax, and we have it on the authority of Mr. Madison that no delegate attempted to answer the question. There is not one sentence in all of those debates which will distinctly aid us in deciding what is a direct tax within the meaning of the Constitution, and we must depend on such historical evidence as we can find outside of that convention and upon the conclusions of those who have gone before us. It has always seemed to me that the history of the contributions made by the Colonies and States would help us in arriving at the truth. At first the tax, or rather the contribution, of each colony was regulated according to the value of its lands and houses, but many became dissatisfied with that method, and it was abandoned. Immediately after the Declaration of Independence had been adopted and promulgated, the Congress took up the question of how supplies should be obtained and how the Colonies should vote in the Continental Congress. Both questions evoked a spirited debate, and it is one of the curiosities of history that the position of the northern and southern men with respect to the standard of contributions, so far as it touched the slavery question, was exactly reversed when they reached the constitutional convention and took up the question of representation. In the Continental Congress the northern men insisted that contributions should be apportioned according to population and that all slaves should be included in the count. John Adams supported that rule. The Madison Papers contain the following:

> Mr. Chase moved that the quotas should be paid not by the number of inhabitants of every condition, but by that of the white inhabitants. He admitted that taxation should be always in proportion to property; that this was in theory the true rule, but that from a variety of difficulties it was a rule which could never be adopted in practice.

In reply to this, Mr. Adams observes that—

> The numbers of people were taken by this article as an index of the wealth of the State and not as subjects of taxation.

And he insisted that every State should make its contribution, counting the slave precisely as it counted the white freeman.

Doctor Witherspoon participated in the debate, and expressed the opinion that—

> The value of lands and houses was the best estimate of the wealth of a nation, and that it was practicable to obtain such a valuation. This is the true barometer of wealth. The one now proposed is imperfect in itself and unequal between the States.

But in spite of the protest of Mr. Chase and the suggestion of Doctor Witherspoon, the Continental Congress adopted the rule that contributions should be made according to population, and that to the white or free population three-fifths of all the others should be added; but when they reached the constitutional convention our northern friends—and I relate it purely as a historical incident and without the slightest sectional feeling—completely reversed their position and contended that the slave should not be counted at all for the purpose of representation. But here the wise men made another compromise and counted the slave for the purpose of representation as equal to three-fifths of a freeman, just as they had done in the Continental Congress for the purpose of contribution.

Mr. President, I have recited this episode in our history for the purpose of showing that our patriot fathers at one time treated lands and houses as the correct standard of taxation or contribution for federal purposes, and it has always seemed to me that this circumstance strongly supports the view that when they were joining taxation with representation they had in their minds the character of taxation to which they had been accustomed. I am confirmed in this opinion by both the legislative and judicial construction of the Constitution as made by the men who had helped to frame it.

THE CARRIAGE TAX.

In 1794 Congress enacted what has since been known as the carriage tax. That statute levied a tax of varying amounts upon carriages of the several kinds. It did not, however, pass without a contest. James Madison was then a Member of the House, and denounced it as unconstitutional. Nor did he stop with opposing it in Congress. He followed it into the forum of the people, and even took pains to have a criticism which Edmund Pendleton had written against the law printed in the newspapers for the purpose, as he afterwards admitted in his private correspondence, of allowing the justices to have the benefit of Pendleton's argument before they decided the case. I understand the weight which attaches and which ought to attach to the opinion of Mr. Madison on any question with respect either to the history or the meaning of the Constitution. He did, perhaps, as much as any other man in framing that great instrument, and certainly he did more toward its framing and adoption than any other man, for, in addition to his work in the convention, those memorable papers which he and Hamilton published exerted a greater influence than any other agency in procuring the adoption of the Constitution. The papers written by Madison are not as strong as those by Hamilton, and, perhaps, the best work of The Federalist was done by the latter; but in the convention the influence of Madison greatly surpassed that of Hamilton. This was not due to Madison's superior ability, but it was due to the fact that Hamilton differed widely from the great body of those delegates as to the form of government which ought to be adopted. He was a royalist and believed the government of Great Britain superior to any republic which could be devised. For that reason, and notwithstanding his great ability, Hamilton had less to do with shaping the Constitution than Madison. But while that is true, Hamilton, perhaps, understood even better than Madison all the legal questions, and he believed the carriage tax was constitutional. We thus find two men who had both been conspicuous members of the convention which had framed the Constitution, and who had done more than any other two men in securing its adoption by the people, differing about the constitutionality of this carriage tax. As between the two, I would not hesitate to take the opinion of Hamilton on a question like this, because, while I utterly reject all of his theories of government, I know he was a great lawyer, and Mr. Madison was not. Fortunately, however, for us we are not left to de-

cide the question according to the view of Mr. Madison or of Mr. Hamilton, for we have an impartial and dispassionate judgment, which must be better than either.

Though Congress had passed that law over the protest of Madison, and it had been approved by Washington, it was contested in the courts, and properly enough the contest was instituted in old Virginia. A citizen of that State refused to pay the tax, and the Government proceeded to collect it. The facts were not in dispute, and upon an agreed statement it was brought to the Supreme Court. The court for the Virginia circuit had been divided and the public interest in the question was intense. In both Houses of Congress and throughout the country the subject was discussed. Alexander Hamilton had been the Secretary of the Treasury when that carriage tax law was passed, and, though he had retired from that great office to resume the practice of his profession, he appeared in behalf of the Government to defend a law passed under his administration of the Treasury Department and upon his recommendation. It was of such absorbing interest that the court room was crowded as it had never been before up to that time, and as it seldom has been since that time. Members of the House and of the Senate deserted their respective halls to attend the argument. In addition to the argument of Hamilton, the Attorney-General of the United States appeared on the Government's behalf, and opposed to them were lawyers of high standing and splendid ability. The attorney-general of Pennsylvania felt sufficient interest in the case to appear on behalf of the plaintiff in error and it is said by one of the commentators on the Constitution that John Marshall, afterwards Chief Justice, took part in the argument. It does not seem from the report of the case that Marshall appeared in the Supreme Court, though I have no doubt that Mr. Tucker was not without warrant for what he said, and I therefore have no doubt that Marshall assisted in preparing the argument. At any rate, there can be no question about the thoroughness with which that case was presented to the court; and, after a most exhaustive argument, the court unanimously decided that a tax on carriages was not a direct tax, and that the law was constitutional.

I am not unmindful that you can find those who will minimize the importance of that decision. You will hear some great lawyers say that it was not well considered, and you will hear others say that it is important only in its *obiter dicta;* but against those loose expressions I oppose the fact that from the day it was decided down to this good hour it has been respected by the courts, accepted by every text writer upon our Constitution since that day as conclusive, and even in the Pollock case the court did not expressly overrule it or say that it had been decided wrong. The opinions delivered in that case would be entitled to our respect for the strength and clearness of their reasonings, but even beyond all that is the fact that two of the men who decided it were conspicuous members of the Constitutional Convention. Nor is that all. A third member of the court, who did not deliver an opinion and who, it is true, did not participate in the decision, because he became chief justice on the very morning when that opinion was announced, was likewise a member of that Constitutional Convention, and it is not within the range of probability that Ellsworth would have permitted that decision to pass unchallenged had he disagreed with it. It is not possible to suppose that he was not familiar with the question, for he was a member of the Senate when that carriage tax bill was before it, and he knew the objections which had been urged against it. Therefore I can safely say that three of the five men who concurred in the opinion that a tax on carriages is not a direct tax had been members of the Constitutional Convention and ought to have known, if anybody could know, what the fathers meant by direct taxation. These judges delivered their opinions seriatim—Chase, Patterson, Iredell, and Wilson—Cushing taking no part, because an illness had prevented him from attending the argument, and Ellsworth taking no part for the reason which I have stated.

Mr. President, it is perfectly true that so far as the decision undertakes to say what is not within the meaning of the term "direct tax" it is in large part *obiter dicta;* and if the Supreme Court of the United States when it held the act of 1894 unconstitutional had confined its decision to the grounds announced in the first opinion the Hylton case would only be persuasive on account of what the judges said by way of illustration and argument; but when, under the reargument, the court went beyond its first decision and held that a tax on the income of personal property is, in law, a tax on the personal property itself, and that a tax on personal property is a direct tax within the Constitution, they fell under the condemnation not merely of the argument in the Hylton case, but of the decision itself. That case decided that Congress has the power to lay a tax on personal property, or, if that be preferred, I will say that it decides that Congress has the power to levy a tax on carriages. But the form of stating it does not alter the substance of the decision, for a carriage is personal property.

It has been said that the court did not decide that this was a tax on the carriage itself, but that it was a tax on the use of the carriage, and Chief Justice Fuller made that mistake in the Pollock case when in summing up the Hylton case he said the court had decided there that the tax in question was a tax on the use of the carriage. That court decided no such thing; and it intimated no such thing. It is unfortunate that the Chief Justice was not more accurate in the use of words. The only intimation in that case which could by any stretch of the imagination justify that statement was that Justice Chase said by way of argument that the tax on carriages was a tax on *expense.*

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Minnesota?

Mr. BAILEY. Certainly.

Mr. CLAPP. Mr. President, it has been a great many years since I have read that case. Did that law provide for an ad valorem tax or a tax upon each particular kind of carriage?

Mr. BAILEY. It provided for a specific tax of so much per carriage, with differing amounts on the different kinds.

Mr. President, Justice Chase said—and that is evidently the basis of the Chief Justice's statement that the court decided that this was a tax on the use of the carriage—that he considered it a tax on expense. But a tax on expense and a tax on the use of an article might, within the contemplation of the law, be very different things. A tax on the keeper of a livery stable according to the number of vehicles used in his business might well be held to be an excise tax upon his occupation, and that is exactly the argument that one of the attorneys made in the first case that assailed the income-tax law of 1864. He insisted that it was apparent that Hylton was engaged in the livery business, or else in the stage-line business, because he said it was not supposable that a private citizen could have one hundred and twenty-five chariots. But in the statement of the case as it appears in the opinion of the court it was agreed that all of the chariots upon which the Government had sought to levy a tax were owned by Hylton and kept by him exclusively for his personal and private use, and not for hire to other persons.

It was no more a decision when the judge said it was a tax on expense than it was a decision when he said that no tax except a tax on land or a capitation tax was subject to the constitutional rule of apportionment. But let us suppose that the court decided that the carriage tax was sustainable upon the ground that it taxed a citizen's expense. That will not militate against our position, for if a tax on expense is not a direct tax, a tax on income can not be. Is it not of necessity true that you have the same right to tax what comes in as you have to tax what goes out? That is fundamental; that is elementary. If Congress can levy a tax on expenses, then surely it can levy a tax on receipts, for the principle is essentially the same in both cases.

Mr. NELSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Minnesota?

Mr. BAILEY. Certainly.

Mr. NELSON. If the Senator will allow me in connection with his argument, I wish here to quote the statute, so as to show that this was a direct tax. It is the act of June 5, 1794, entitled "An act laying duties upon carriages for the conveyance of persons."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there shall be levied, collected, and paid, upon all carriages for the conveyance of persons, which shall be kept by or for any person, for his or her own use, or to be let out to hire, or for the conveying of passengers, the several duties and rates following, to wit:

Then it specifies the duties, showing clearly it was a tax upon the carriage, and not a tax upon the use of the carriage.

Mr. BAILEY. I think that is too clear to need further elucidation.

Mr. BORAH. I only want to say, in connection with the reading of this statute, that it should not be forgotten that the only portion of the statute involved in the decision was the portion of the statute which levied a tax upon carriages for personal use and not the portion which levied a tax upon carriages for hire or for use to a party. And that was one of the distinctions which was made in the argument.

Mr. SUTHERLAND. Will the Senator from Texas permit me?

Mr. BAILEY. Certainly.

Mr. SUTHERLAND. Does the Senator think, under the language of the statute from which the Senator from Minnesota has now read, that the tax could have been levied and collected upon a carriage kept for sale? The language is a carriage kept for use—for his or her own use—or for hire to others.

Mr. BAILEY. I think it clear from the language that it was intended to exclude carriages kept for sale, either in a store or in a carriage factory, from the operation of the law, and, therefore, under a fair construction of the statute they could not have been taxed.

Mr. SUTHERLAND. Precisely. Therefore the tax, when we get to the last analysis, is a tax upon the use of the carriage and not upon the carriage itself.

Mr. BAILEY. That inference does not follow, and it is not true according to the history of the time. I did not care to introduce any inquiry as to the motive of Congress, but I will do so now since the Senator has made it material. We know that Madison's statement was that the opponents of luxury had joined with advocates of the principle to pass the carriage tax. In other words, Mr. Madison complained that they were trying to make prosperous people pay a tax then just as we are trying to make them pay a tax now. That was the reason they imposed the tax upon those who had the carriages for use and not upon those who had them for sale. It did not necessarily follow that a man who wanted to sell one could afford to pay the tax. Besides, there would have been no justification for a tax upon people who were engaged in the carriage business without a tax upon people who were engaged in other kinds of business. The object of the law was to reach a particular kind of property, because that particular kind of property denoted by its possession the ability of the owner to pay the tax. That was the whole of it.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Maryland?

Mr. BAILEY. Certainly.

Mr. RAYNER. Without committing myself to this income tax, either for or against, I should like to ask the Senator from Texas whether I understand him. Outside of the decisions, does the Senator think that when the constitutional convention said a "direct tax" it meant only a capitation tax, a tax on land, and a tax on slaves? Does the Senator think that completes the definition? Will he give me his own opinion?

Mr. BAILEY. I think that was all that the constitutional convention definitely intended to include; but I am not so clear in that opinion as I would like to be; and it is barely possible that they also contemplated an assessment upon all the property of the citizen, real and personal. That was Hamilton's view as expressed in his brief, the Senator will remember.

Mr. RAYNER. With the Senator's information upon that subject, I expected that answer. There is just one other question. Does the Senator think there was at that time any accurate or comprehensive definition of what a direct tax meant?

Mr. BAILEY. I am absolutely certain there was not, for if any man could have given an accurate and comprehensive answer, the question of Mr. King would have been answered.

Mr. RAYNER. I was going to call the attention of the Senator to the fact that in a convention where Madison and Wilson and Martin and others sat, Mr. King asked "What is a direct tax?" and not a man in the convention answered him; and not a man in the convention knew what it meant.

Mr. BAILEY. That is probably true, but I refer it back to the early methods of contribution, and it was their familiarity with contributions according to lands and slaves that has led me to the conclusion that lands and slaves—lands of course including all appurtenances—were the objects of direct taxation which the convention had in mind.

Mr. President, whatever might have been my doubt about it, those doubts must have disappeared under the uniform construction of the Constitution, both by Congress and by the Supreme Court.

Mr. HEYBURN. Will it interrupt the Senator if I ask him a question?

Mr. BAILEY. It will not.

Mr. HEYBURN. I should like to inquire what, in his judgment, is the significance of the fact that in section 8 of Article I the word "taxes" is not included within the limitation. Was there a special purpose to recall it?

The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties—

Mark it—"taxes" is omitted—

but all duties, imposts, and excises shall be uniform throughout the United States.

Was it intended that taxes should not come within the rule requiring uniformity?

Mr. BAILEY. That opinion was expressed in the Hylton case, and it was said that there may be taxes not direct and yet not falling within the definition of imposts, duties, and excises. The fact that the Constitution uses "taxes" followed by "imposts, excises, and duties," and then seems to divide taxes into direct and other taxes, would seem to imply that there may be taxes which are not direct and which do not fall within the terms imposts, duties, or excises.

Mr. HEYBURN. Not within the limitation?

Mr. BAILEY. Not within the limitation. And therefore, as was said in the Hylton case, governed by the will of Congress, and not subject to the rule of apportionment, as a direct tax, nor to the rule of uniformity, as excises, imposts, and duties are, nor by the rule of apportionment as direct taxes are.

Mr. HEYBURN. Did the first Congress which passed a revenue law—and it was the first act enacted by any Congress of the United States—intend to consider the exception when it provided:

On every coach, chariot, or other four-wheel carriage, and on every chaise, solo, or other two-wheel carriage, or parts thereof, fifteen per centum ad valorem.

That is the first enactment of the carriage tax law, and it was in the first bill. Now, did they not intend, or is it not a fair presumption that they intended, that that tax should be outside of the limitation contained in the provision of the Constitution?

Mr. BAILEY. Of course the Senator understands that the Hylton case arose, not under the act which he has just read, but under the act which the Senator from Minnesota read a few moments ago.

Mr. NELSON. I want to remind the Senator of the fact that that which the Senator from Idaho cited was a duty levied on imported carriages *and not in the shape of* the other tax which he has been discussing, and therefore it has no application.

Mr. BAILEY. I so understand.

Mr. NELSON. I wish further to add in this connection before I sit down that one of the judges of the Supreme Court—I can not now recall which one, but I am inclined to think it was Chief Justice Fuller—made a statement that there may be other taxes besides the direct tax and imposts and duties, but that so far Congress has been unable to discover such a subject of taxation.

Mr. BAILEY. Evidently the Chief Justice intended to negative that idea, because he said it had been suggested that there may be others, though Congress searching for objects of taxation through a hundred years has never found one.

Mr. HEYBURN. If the Senator will permit me, the application of my suggestion was to the argument of the Senator from Texas and not to the statute referred to by the Senator from Minnesota.

Mr. BAILEY. If the Senate rejects my income tax amendment, I shall draw a bill just like that old carriage tax, substituting automobiles for carriages and readjusting the rates; and I will see if we can not make these devotees of luxury pay some sort of tax.

THE HYLTON CASE DECIDED.

I am willing to admit that what was said about land and capitation taxes only being direct taxes was *obiter dicta*, for I can safely rest this debate on the unassailed and unassailable fact that the Supreme Court of the United States by a unanimous judgment has said that the Congress can levy a tax on personal property without apportioning it. It will, however, be instructive to read some extracts from these opinions.

Judge Chase said:

The Constitution evidently contemplated no taxes as direct taxes, but only such as Congress could lay in proportion to the census. The rule of apportionment is only to be adopted in such cases where it can reasonably apply, and the subject taxed must ever determine the application of the rule.

If it is proposed to tax any specific article by the rule of apportionment, and it would evidently create great inequality and injustice, it is unreasonable to say that the Constitution intended such tax should be laid by that rule.

I am inclined to think, but of this I do not give a judicial opinion, that the direct taxes contemplated by the Constitution are only two, to wit, a capitation or poll tax, simply, without regard to property, profession, or any other circumstance, and a tax on land. I doubt whether a tax, by a general assessment of personal property within the United States, is included within the term "direct tax."

Judge Patterson said:

Whether direct taxes, in the sense of the Constitution, comprehend any other tax than a capitation tax, and tax on land, is a questionable point. If Congress, for instance, should tax, in the aggregate or mass, things that generally pervade all the States in the Union, then, perhaps, the rule of apportionment would be the most proper, especially if an assessment was to intervene. This appears by the practice of some of the States to have been considered as a direct tax. Whether it be so under the Constitution of the United States is a matter of some difficulty; but as it is not before the court, it would be improper to give

any decisive opinion upon it. I never entertained a doubt that the principal, I will not say the only, objects that the framers of the Constitution contemplated as falling within the rule of apportionment were a capitation tax and a tax on land.

Justice Iredell said:

There is no necessity or propriety in determining what is or is not a direct or indirect tax in all cases.

Some difficulties may occur which we do not at present foresee. Perhaps a direct tax, in the sense of the Constitution, can mean nothing but a tax on something inseparably annexed to the soil—something capable of apportionment under all such circumstances.

A land or a poll tax may be considered of this description.

The latter is to be considered so particularly, under the present Constitution, on account of the slaves in the Southern States, who give a ratio in the representation in the proportion of 3 to 5.

Either of these is capable of apportionment.

In regard to other articles, there may possibly be considerable doubt.

It is sufficient, on the present occasion, for the court to be satisfied that this is not a direct tax contemplated by the Consitution in order to affirm the present judgment, since, if it can not be apportioned, it must necessarily be uniform.

I am clearly of opinion this is not a direct tax in the sense of the Constitution, and, therefore, that the judgment ought to be affirmed.

It thus appears that while there were some intimations of doubt in those opinions, these great and upright judges all inclined to the belief that a direct tax as contemplated by the Constitution included only a tax on land with its improvements and a capitation tax, and their opinion has been followed by all judges since then, and accepted by all text-writers of repute until the Pollock case.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Utah?

Mr. SUTHERLAND. Will the Senator permit me to ask him a question right here?

Mr. BAILEY. Certainly.

Mr. SUTHERLAND. The language of the constitutional provision, as I recall it, is that no capitation or other direct tax shall be laid, except in accordance with the rule of apportionment. As I understand the Senator's position now it is that, in using the words "direct tax," the Constitutional Convention intended to include but one form of tax, namely, a tax upon land or the improvements upon land.

Mr. BAILEY. I did not say that, because clearly, and within the very words of the Constitution, a capitation tax is a direct tax.

Mr. SUTHERLAND. I do not think I misstate it, because provision is already made for a capitation tax. The language is "no capitation or other direct tax." The capitation tax has already been covered in express terms. So I repeat that what the Senator understands, as I understand him, by the use of the words "direct tax" in the Constitution is that it was intended to include but one kind of tax, namely, a tax upon land. The question I desire to ask the Senator is this——

Mr. BAILEY. That is not a safe predicate for the Senator's question, because it does not exactly express my view. I said land and its improvements, and, of course, that leaves the question open as to whether the slave was a part of the land or not. It was held by many of the States in which slavery existed that he was part of the land. The slave, however, was clearly subject to a direct tax under the capitation clause. Now I will hear the Senator.

Mr. SUTHERLAND. The Senator has now stated the matter differently from the way I understood him originally. The question I was going to put to the Senator is this: If the Constitutional Convention intended to include but that one form of tax, namely, a tax upon land and improvements, in the Senator's opinion why was it that the Constitutional Convention did not plainly say a capitation tax and a tax upon land and improvements, which would have made it absolutely clear, instead of using an expression which seems to include a great deal?

Mr. BAILEY. They were making a constitution, and were necessarily confined to the use of general terms. The Senator does not forget the eloquent tribute which Marshall paid to the Constitution in that respect; and if these enumerations and restrictions had been used in one clause, the absence of them would have raised a doubt in other clauses, thus making our Constitution less admirable than it is.

Mr. SUTHERLAND. And yet, if the Senator will permit me, they did use the word "capitation" when, according to the Senator's contention, if I understand him, the word "capitation" is embraced in the words "direct tax." They enumerated it to that extent.

Mr. BAILEY. The Senator from Utah quotes the Constitution correctly, but he has overlooked the fact that the words "or other direct" were added without explanation or debate. It originally read, and as first agreed to by the convention it was, that "no capitation tax shall be laid except in proportion to the census or enumeration hereinbefore directed to be taken;" and upon the suggestion of some delegate the words "or other direct" were added out of an abundant caution. I think that circumstance sufficient to explain why they did not attempt a definition as the Senator suggests.

LEGISLATIVE CONSTRUCTION.

Mr. President, now let us see what has been the legislative construction of the Constitution. Of course, I understand that legislative precedents are not entitled to the same weight and do not possess the same authority as judicial ones, but they are certainly not without some value. Within two years after the opinion in the Hylton case Congress strongly indicated its full agreement with the court. On the 14th of July, 1798, Congress levied a direct tax of $2,000,000, and apportioned it among the several States. Did it treat personal property as an object of direct taxation? No, sir. That $2,000,000 of direct taxes was levied on land, houses, and slaves. It is inconceivable that if Congress had not understood and accepted the decision of the Supreme Court in the Hylton case, they would have levied that entire two million dollars of taxes—an enormous sum in that day, though it seems a mere trifle to us in this time when we spend so many millions—upon real property, the very species of property about which the people were most sensitive and would have exempted all personal property from the levy. It was only in pursuance of the well-settled opinion which then prevailed throughout the country, and in obedience to the decision in the Hylton case, which had held that personal property was not the subject of a direct tax, that Congress apportioned two millions among the several States and levied it upon lands and slaves—the slaves per capita, the land per acre.

In 1813 Congress passed a second direct tax law providing for $3,000,000; and in accordance with the doctrine of the Hylton case, which had been universally accepted by the statesmen of that generation, this tax was laid on land and slaves. James Madison was then President of the United States and though he had denounced the carriage tax of 1794 as unconstitutional he approved the act of 1813, thus evidencing his acquiescence in the court's construction of the Constitution.

Mr. NELSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Minnesota?

Mr. BAILEY. Certainly.

Mr. NELSON. I wish to call the Senator's attention to the fact, in connection with the laws which he cites, that in the law of 1798, levying a direct tax of two millions, in the law of 1813, levying an additional tax of two millions, and in the law of 1815, levying a tax of six millions, the levy was made upon the valuation of the land, and in none of them was there ever any attempt to levy upon the rent, or the income of the land.

Mr. BAILEY. That is true, and it forcibly illustrates that the rent of the land was not considered real estate in that day.

Mr. SUTHERLAND. The Senator, of course, is aware of the fact that before the first act imposing a direct tax was passed by Congress the whole matter was submitted to the Secretary of the Treasury, then Mr. Oliver Wolcott, jr., who gave an elaborate opinion to Congress upon the subject of the various plans that had been suggested; and in that opinion he discussed at great length the two propositions, first as to whether or not any direct tax should be imposed upon the various things which were the subject of taxation in the various States, or whether it should be limited to the land tax; and after discussing both propositions he gave it as his opinion that it would be more convenient for the reasons which he stated to impose it upon land.

I wish to ask the Senator whether he does not think, in view of that, that the first Congress proposed a direct tax upon land as a matter of convenience and not because it believed it to be the only subject of a direct tax.

Mr. BAILEY. I do not. The law providing that first direct tax was passed two years after the decision in the Hylton case and while it was fresh in the public mind. Under its authority they could not have laid a direct tax on personal property; or certainly they could not have laid it on all personal property, for whatever was subject to the tax imposed by the act of 1794 could not have been subjected to the tax imposed by the act of 1798; and it was not the recommendation of the Secretary of the Treasury, but it was the decision of the court in the Hylton case to the effect that personal property was not the subject of direct taxation which controlled Congress.

Mr. BEVERIDGE. Before the Senator leaves the Hylton case, will he please tell us—I have forgotten myself—how soon after that decision the carriage tax was repealed?

Mr. BAILEY. My recollection is that it was to expire by its own terms, and that it was repealed before its expiration.

Mr. BEVERIDGE. It was repealed, was it not, almost immediately after the enactment?

Mr. BAILEY. I am not sure of that, but I am sure of the general proposition that in that day they repealed every tax as soon as they could dispense with collections under it. I know that Congress repealed that tax, but I would not undertake to say without examination when it was repealed.

In 1815 Congress for a third time levied a direct tax, apportioned it among the several States, and provided for its assessment on lands with their improvements and slaves. This act called for $6,000,000 and, like the one of 1813, was approved by Mr. Madison. The fourth and the last direct tax was levied by Congress in 1861. It provided for $20,000,000, apportioned it among the several States, and directed its assessment upon lands and their improvements. There was no provision in that act for taxing slaves, because slavery did not exist in any State where that tax could be collected. The Congress of 1861 gave a most direct and positive proof that it did not consider personal property subject to a direct tax by omitting it, and it gave a still more direct and striking proof of its opinion that an income tax is not a direct tax by incorporating into that law a provision for a tax on incomes precisely in language and effect like that which I shall offer to the pending bill. It is not supposable that Congress would have separated the direct tax from an income tax if they had believed that the latter could have been included in the former. The Union then was about to engage in a desperate struggle for its life, and those charged with its preservation were seeking revenue from every source. They decided to tax, and they did tax, both real estate and incomes of every kind, but they taxed the one under the constitutional provision which governs direct taxation, and they taxed the other as an indirect tax, not requiring to be apportioned.

DECISIONS OF THE COURT.

This, Mr. President, is the legislative history of these several acts, and it makes it perfectly manifest to my mind that each of the Congresses through which they passed entertained the view for which I am contending. If this legislative history stood alone, the opponents of my proposition might affirm with some show of reason that it does not close the controversy; but, sir, fortunately for the cause of truth and justice, it does not stand alone, and the courts have repeatedly construed one of those acts. The first case which reached the Supreme Court involving the precise question of whether an income tax is a direct tax arose under the act of 1864, and is reported in Seventh Wallace, under the style of the Pacific Insurance Company *v.* Soule. The insurance company did not originally dispute the validity of the law, but made its return under it and offered to pay its tax, amounting to more than $5,000. The income of that company had been received in gold, and the tax collector demanded that it should be measured in currency, which would have made the tax $7,365 instead of $5,376. The people of California never looked with much favor on the legal-tender acts, and the notes issued under them never circulated very freely in that State. Even after the war had closed, and we described in nearly all of the other sections the difference between gold and greenbacks as a premium on gold, the people of California always described it as a discount on paper.

The insurance company tendered, as I have already stated, to the officer of the Government the amount of its tax as it claimed a right to discharge it, but the officer refused to accept it and demanded more than $1,900 above the amount which had been tendered. This was the difference which sent the disagreeing parties to court; but as it always happens when a lawyer is compelled to go into the court to defend his client, he raises every issue which offers him any hope of winning his case, and following that lawyer's habit they attacked the validity of the law itself as well as the construction of the statute. The attorneys for the insurance company filed an elaborate brief containing substantially every argument which was afterwards made in the Pollock case. But the court rejected them all without hesitation and without division.

The question presented was thus stated in the opinion:

> The sixth question is:
> Whether the taxes paid by the plaintiff, and sought to be recovered back in this action, are not direct taxes, within the meaning of the Constitution of the United States.

The court then proceeds to recapitulate the constitutional provisions relating to the subject, and after reviewing the Hylton case, concludes its opinion in these words:

> To the question under consideration it must be answered that the tax to which it relates is not a direct tax, but a duty or excise; that it was obligatory on the plaintiff to pay it.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Idaho?

Mr. BAILEY. I do.

Mr. BORAH. I simply want to suggest to the Senator from Texas that in the facts which were presented to the court in the case to which he has just referred, it was shown that the income derived in part in that case was derived from real estate, and that matter was particularly impressed upon the court at the time of the presentation of the case.

Mr. BAILEY. That is true; and I intended, without stopping to read them, to put some of those statements in the RECORD. I will, however, now take the time to read that part of the syllabus which says:

> The income tax or duties laid by sections 105 and 120 of the act of June 30, 1864, and the amendment thereto of July 13, 1866, upon the amounts insured, renewed, or continued by insurance companies upon the gross amounts of premiums received, and assessments made by them, and also upon dividends, undistributed sums, and income is not "a direct tax," but a duty or excise.

I might add that Mr. Evarts was the Attorney-General of the United States, and in arguing this case, relied entirely on the Hylton case as to the character of the tax.

The question of what is a direct tax was next presented to the court in the case of the Veazie Bank *v.* Fenno, reported in Eighth Wallace, and the court reaffirmed the Hylton and the Insurance Company cases. This case was argued for the bank, as I remember, by Reverdy Johnson, one of the great lawyers of the American bar; and it was argued on behalf of the Government by Mr. Hoar, who was the Attorney-General under Grant's administration and, as I remember it, a brother of the venerable Senator from Massachusetts who was so long an honored Member of this body.

Again, the case upon which the Government relied was the Hylton case, fortified by the Pacific Insurance Company case, which I have just cited, and in reply to the argument of the Attorney-General, Mr. Johnson declared that "the dicta of the judges made it obvious that the great question of direct taxes was crudely considered." How did the court answer that criticism of the Hylton case? Here it is, and, to save my voice, I will ask the Secretary to read from page 541, where the pencil mark begins, to the pencil mark on page 544.

The VICE-PRESIDENT. The Secretary will read as indicated.

The Secretary read as follows:

> Much diversity of opinion has always prevailed upon the question, What are direct taxes? Attempts to answer it by reference to the definitions of political economists have been frequently made, but without satisfactory results. The enumeration of the different kinds of taxes which Congress was authorized to impose was probably made with very little reference to their speculations. The great work of Adam Smith, the first comprehensive treatise on political economy in the English language, had then been recently published; but in this work, though there are passages which refer to the characteristic difference between direct and indirect taxation, there is nothing which affords any valuable light on the use of the words "direct taxes" in the Constitution.
>
> We are obliged, therefore, to resort to historical evidence, and to seek the meaning of the words in the use and in the opinion of those whose relations to the Government and means of knowledge warranted them in speaking with authority.
>
> And, considered in this light, the meaning and application of the rule as to direct taxes appears to us quite clear.
>
> It is, as we think, distinctly shown in every act of Congress on the subject.
>
> In each of these acts a gross sum was laid upon the United States, and the total amount was apportioned to the several States, according to their respective numbers of inhabitants, as ascertained by the last preceding census. Having been apportioned, provision was made for the imposition of the tax upon the subjects specified in the act, fixing its total sum.
>
> In 1798, when the first direct tax was imposed, the total amount was fixed at $2,000,000; in 1813 the amount of the second direct tax was fixed at three millions; in 1815 the amount of the third at six millions, and it was made an annual tax; in 1816 the provision making the tax annual was repealed by the repeal of the first section of the act of 1815, and the total amount was fixed for that year at $3,000,000. No other direct tax was imposed until 1861, when a direct tax of $20,000,000 was laid and made annual, but the provision making it annual was suspended, and no tax except the first laid was ever apportioned. In each instance the total sum was apportioned among the States by the constitutional rule, and was assessed at prescribed rates on the subjects of the tax. These subjects in 1798, 1813, 1815, 1816 were lands, improvements, dwelling houses, and slaves, and in 1861 were lands, improvements, and dwelling houses only. Under the act of 1798 slaves were assessed at 50 cents on each; under the other acts, according to valuation by assessors.
>
> This review shows that personal property, contracts, occupations, and the like, have never been regarded by Congress as proper subjects of direct tax. It has been supposed that slaves must be considered as an exception to this observation, but the exception is rather apparent than real. As persons, slaves were proper subjects of a capitation tax, which is described in the Constitution as a "direct tax;" as property, they were, by the laws of some, if not most, of the States, classed as real property, descendible to heirs. Under the first view, they would be subject to the tax of 1798 as a capitation tax; under the latter, they would be subject to the taxation of the other years as realty.
>
> That the latter view was that taken by the framers of the acts after 1798 becomes highly probable when it is considered that in the States where slaves were held much of the value which would otherwise have attached to land passed into the slaves. If, indeed, the land only had been valued without the slaves the land would have been subject to much heavier proportional imposition in those States than in States where there were no slaves, for the proportion of tax imposed on each State was determined by population, without reference to the subjects on which it was assessed.
>
> The fact, then, that slaves were valued, under the acts referred to, far from showing, as some have supposed, that Congress regarded personal property as a proper object of direct taxation under the Constitu-

tion, shows only that Congress after 1798 regarded slaves for the purpose of taxation as realty.

It may be rightly affirmed, therefore, that in the practical construction of the Constitution by Congress direct taxes have been limited to taxes on land and appurtenances and taxes on polls, or capitation taxes.

And this construction is entitled to great consideration, especially in the absence of anything adverse to it in the discussions of the convention which framed and of the conventions which ratified the Constitution.

Mr. BAILEY. Could anything be more directly in point than this? Let me repeat one paragraph of it:

It may be rightly affirmed, therefore, that in the practical construction of the Constitution by Congress, direct taxes have been limited to taxes on land and appurtenances and taxes on polls, or capitation taxes.

And again, beginning on page 546, the court says:

The tax under consideration is a tax on bank circulation, and may very well be classed under the head of duties. Certainly it is not, in the sense of the Constitution, a direct tax. It may be said to come within the same category of taxation as the tax on incomes of insurance companies, which this court at the last term, in the case of Pacific Insurance Company v. Soule, held not to be a direct tax.

I am certain that the concluding sentence of that extract has not escaped the special attention of the Senate, but it will not be amiss for me to read it again and emphasize it:

It may be said to come within the same category of taxation as the tax on incomes of insurance companies, which this court at its last term, in the case of Pacific Insurance Company *v.* Soule, held not to be a direct tax.

The next case to reach that court was that of Scholey *v.* Rew, reported in Twenty-third Wallace. It involved the tax on inheritances, which was resisted on the ground that—

It is within the prohibitions of the Constitution, which ordain that—"Direct taxes shall be apportioned among the several States * * * according to their respective numbers."

The court sums up the contention against the law and dismisses it in these words:

Whether direct taxes in the sense of the Constitution comprehend any other tax than a capitation tax and a tax on land is a question not absolutely decided, nor is it necessary to determine it in the present case, as it is expressly decided that the term does not include the tax on income, which can not be distinguished in principle from a succession tax such as the one involved in the present controversy.

And thus this court declares that a succession tax is in principle the same as an income tax, and sustains the succession tax, which was assailed in the Scholey case, upon the same ground that it had sustained the income tax in the insurance company case.

The next case, Mr. President, that came to the court is that of Springer *v.* The United States. There are Senators here who served in the House of Representatives with the distinguished defendant in that case below. The late William M. Springer, a citizen of Illinois, and for years a Member of the House from that State, refused to pay the income tax assessed against him, declaring that the law directing the assessment was unconstitutional and void. The Government of the United States levied on his homestead in the city of Springfield, sold it, purchased it at execution sale, and brought an action of ejectment against him. It was on that action of ejectment that this case came to the Supreme Court of the United States. Here was a direct, positive, unequivocal attack upon the constitutionality of an income-tax law, just such as I am proposing now. I doubt if any brief ever filed in the Supreme Court of the United States on this question was more elaborate than the brief of Springer. It is said that he prepared it for himself, and he exhausted the learning on the subject. He called to his aid every political economist who had ever touched upon the question, and many of them have discussed it. He searched the debates of the federal convention. He searched the debates of the state conventions that ratified the Constitution. He left nothing unsaid that could be said.

The great lawyers who tried the Pollock case added nothing new to what had been said in the Springer case. It was heard by a full bench and decided unanimously, just as the other cases to which I have referred were decided, except in the case of the Veazie Bank *v.* Fenno, and the dissent of Justice Nelson and Justice Davis in that case did not touch the question which I am now discussing. They dissented upon the ground that the law involved in that was an attempt by the Federal Government to destroy an institution which the States in the exercise of their sovereign power had a full and perfect right to create. Except in that case and upon that question, irrelevant to this discussion, every one of these cases has been decided by a unanimous court. The opinion in this Springer case was delivered by Justice Swayne, and here is the way he states the question presented for the court's decision:

Was the tax here in question a direct tax? If it was, not having been laid according to the requirements of the Constitution, it must be admitted that the laws imposing it and the proceedings taken under them by the assessor and collector for its imposition and collection were all void.

He then proceeded to argue the question, and this is the conclusion of the whole matter. Hear it, Senators. It could not be more directly, more distinctly, and more unequivocally expressed:

Our conclusions are that direct taxes, within the meaning of the Constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate; and that the tax of which the plaintiff in error complains is within the category of an excise or duty.

What was the tax of which the plaintiff in error complained? It was an income tax drawn almost word for word as the amendment which I have offered; and that unanimous judgment of the court, pronouncing in favor of the validity of that law, stripped this American citizen of his homestead.

Mr. CRAWFORD. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from South Dakota?

Mr. CRAWFORD. Only for a question.

Mr. BAILEY. I do.

Mr. CRAWFORD. I am very much interested in the Senator's argument. In connection with the Springer case, the distinguished Senator may develop this point, and if he has it in his mind he will pardon me for making it here.

In the opinion in the Pollock case I think Mr. Chief Justice Fuller undertakes to distinguish that case by saying that the income of Springer was to quite a large extent a professional income—he was a practicing lawyer—and therefore it was an excise, and the case could be sustained on that ground, eliminating that part of it which was derived from real estate.

Mr. BAILEY. That is one of the inconsistencies between the first and second opinions in the Pollock case which I intend to discuss at some length when I reach the second opinion. But in orderly sequence I must first consider the original opinion.

Senators will, of course, recall that on the original hearing the court decided that a tax on the income derived from real estate is, in law, a tax on the real estate itself, and therefore a direct tax, which Congress does not possess the constitutional competence to levy except by apportioning it among the several States according to their population. In other words, the court decided that an income derived from real estate is real estate, and to establish that doctrine the Chief Justice, speaking for the court, relied upon an ancient and undisputed rule of the feudal law which declares that—

if a man seized of land in fee by his deed granteth to another the profits of those lands, to have and to hold to him and his heirs, and maketh livery secundum formam chartæ, the whole land itself doth pass.

That is true, but it was not relevant to that case, because there the owner did not grant, nor did the law demand, the profits of any man's land forever. It took but a fraction of the rent, and took that only from year to year; and the exaction might have been released at any time that Congress saw fit to repeal the law. Not only was this quotation from the common law inapt and insufficient to support the decision if there had been no adjudications upon that point, but that very question has passed under review more than once in the highest courts of several States. I shall, however, leave the examination and discussion of those cases to the Senator from Idaho, who, as I happen to know, has given that subject special attention; and I leave them to him in the full confidence that he can present them to the satisfaction of the Senate.

Before dismissing this first decision, however, I desire to submit some practical arguments which seem to me both applicable and conclusive against it. If I should lease my plantation to a tenant, agreeing to take as rent one-fourth of the cotton that he might raise, will any man assert that after he had picked the cotton and delivered it to me it is real estate? As long as the cotton plant is growing, or as long as the cotton is still on the plant, it forms a part of the land, and if I should sell the plantation, the cotton in that state would pass with the land itself; but after it has been picked and ginned all connection between it and the soil upon which it was grown has been completely severed and it is personal property both in fact and in law. Let me analyze the proposition in another form: Suppose I rent my farm to a tenant for a thousand dollars per annum; he pays me the money and I place it in the bank to my credit and use it to meet my current expenses. Does any man suppose that I am spending real estate when I spend that money? Will any layman say it as a matter of fact, or will any lawyer say it as a matter of law? And yet this decision says it. When a western landowner rents his farm to be used for growing wheat and agrees to take his pay in money or in a part of the crop, does he consider that it is real estate when he has received the wheat or money and sold the one or spent the other? The learned Chief Justice when writing that opinion overlooked the fundamental and essential distinction between the right to receive rent and the proceeds of that right after reduced to possession.

It is true that the right to rent is what the law calls an "incorporeal hereditament," and when that right has been violated or denied, a real-estate action was the proper remedy at common law; but when the rent has once been delivered to the landlord it bears no relation to the land for the use of which it has been paid. But while the court ignored that distinction, the law did not, because the statute levies no tax upon any income from land until after it had been paid by the lessee and received by the lessor. And under a law so worded the income received from land can not be considered real estate in law any more than it can in fact. Let me test the soundness of the court's reasoning by one more illustration.

The distinguished Senator from Mississippi [Mr. MCLAURIN] who sits before me is a great criminal lawyer—one of the greatest in all this country. I knew him in my native State of Mississippi, where I have seen him in the courts, and if my life were at stake I would rather have him to defend me than any man I have ever known; and I put this question to him: Does he think that a conviction could be secured under an indictment, charging the theft of land, by proving that the defendant had stolen money which had been collected from a tenant as rent? And yet, Mr. President, in order to hold the law of 1894 invalid the court was compelled to decide that rent after it had been reduced to the landlord's possession and applied to the landlord's use was still real estate.

In this first decision the court held the tax on incomes from real estate invalid, but was unable to reach a decision on the other questions, because on those other questions the judges were equally divided. Those questions were—

First, Whether the void provision as to rents and income from real estate invalidated the whole act;

Second, Whether as to the income from personal property, as such, the act is unconstitutional as laying direct taxes; and

Third, Whether any part of the tax, if not considered as a direct tax, is invalid for want of uniformity on either of the grounds suggested.

With these grave questions plainly involved in the case and left undecided, it was not surprising that a motion for a rehearing was filed and granted; and upon that rehearing the court decided the second question, which had been left in doubt by the first decision, and the first question, of course, followed a decision of the second. While I think that the court was wrong in holding that the law was unconstitutional in so far as it levied a tax on the income from real estate and from personal property, I have no doubt that after so deciding they ought to have nullified the entire law, because I think it certain that Congress would never have taxed incomes derived from brain and muscle while leaving the incomes from vast accumulations of property untouched. The third question was not discussed in the second opinion, because the other two questions disposed of the case; but as nothing was said concerning it, we are left to assume that four of the judges still adhered to the opinion that the law was void for a lack of uniformity.

THE SECOND POLLOCK DECISION.

I have now reached the rehearing, and I will proceed at once to answer the suggestion of the Senator from South Dakota [Mr. CRAWFORD]. In order that I may answer it fairly both to the court and to the Senate, perhaps I ought to state it in the exact language of the opinion, which is this:

> The statement of the case in the report shows that Springer returned a certain amount as his net income for the particular year, but does not give the details of what his income, gains, and profits consisted in. The original record discloses that the income was not derived in any degree from real estate, but was in part professional as attorney at law and the rest interest on United States bonds. It would seem probable that the court did not feel called upon to advert to the distinction between the latter and the former source of income, as the validity of the tax as to either would sustain the action.

That attempt to distinguish the Springer case from the case then at bar was made in the first opinion and might be treated as possessing some merit if the second opinion had not followed. I mean to say, that as in the first opinion the court merely invalidated the tax on incomes received from real estate and left all other provisions of the law to stand, it was permissible to say that the tax in the Springer case could have been sustained as a tax on professional income. But when in the second opinion the court went further and, holding the tax on incomes from personal property also unconstitutional, declared the entire law void and of no effect, it rendered the distinction drawn in the first opinion utterly ridiculous.

The law under which Springer's home was sold and which he resisted as unconstitutional levied a tax on incomes of every kind, specifically enumerating rents, and including in a blanket provision incomes derived from every other source. If therefore the entire law under consideration in the Pollock case was unconstitutional and void, as was decided upon the reargument and stated in the second opinion, then it must necessarily follow that the law of 1864 was also void in toto and a tax on Springer's professional income could not have been sustained. In other words, and in plain words, it is simply absurd to say that a professional or any other kind of an income can be taxed under a law which is unconstitutional and void; and I am sure that if Chief Justice Fuller had known when he was writing his first opinion that the case would be reheard and decided according to the second opinion he would never have attempted the distinction to which the Senator from South Dakota has alluded. The act of 1864 was substantially identical with the act of 1894, and if the latter was unconstitutional the former could not have been a valid law, and a tax on professional incomes could not have been collected under it. Will any Senator contend that any kind of tax could have been assessed and collected under the act of 1894 after the court's second decision? Plainly it could not, for after deciding that its tax on the incomes from real estate and personal property was unconstitutional, it held the statute void from the enacting clause to the conclusion, and it could give no right to any officer nor impose any burden on a citizen.

If that decision is sound in law and logic, then certainly Springer could not have been compelled to pay any tax under the act of 1864, and this Republic despoiled him of his property without the shadow of a right and in violation of our organic law. The first decision in the Pollock case did leave, I grant you, the right to tax incomes derived from professional services as well as the incomes derived from personal property, and under that decision the distinction between the Springer and the Pollock cases might have been maintained; but it taxes our charity too much to ask us to believe that the justices who subscribed to the second decision in the Pollock case could not have been entirely candid in making the distinction between the Springer and the Pollock cases in their first opinion.

Not only is the second decision in the Pollock case in direct and irreconcilable conflict with the Springer case, but it is inconsistent with the first opinion in the Pollock case. It is true enough that the court equally divided on the question as to whether a tax on the income of personal property is a direct tax, and the four judges who voted to affirm that doctrine in the first case are not embarrassed by the decision upon the rehearing; but in the opinion, Chief Justice Fuller, speaking for his brothers who agreed with him, excused them for refusing to hold that a tax on the income from personal property was direct after they had decided that an income on real estate was a direct tax. This is his language:

> We admit that it may not unreasonably be said that logically, if taxes on the rents, issues, and profits of real estate are equivalent to taxes on real estate, and are therefore direct taxes, taxes on the income of personal property as such are equivalent to taxes on such property, and therefore direct taxes. But we are considering the rule stare decisis, and we must decline to hold ourselves bound to extend the scope of decisions—

Thus, Mr. President, the court in that first opinion conceded that the uniform decisions had been that a tax on the income of personal property is not a direct tax; but one of the justices had now changed his opinion, and these cases were to be reversed.

Mr. RAYNER. Will the Senator allow me?

Mr. BAILEY. Certainly.

Mr. RAYNER. Does not the Senator think that Justice Brown changed his views between the first and the second case? Can you read his opinion in the second case without coming to that conclusion?

Mr. BAILEY. I feel perfectly sure that it was not Justice Brown.

Mr. RAYNER. I am not talking about the second change of opinion. If the Senator recollects, in the first case there were two dissenting opinions—one by Justice Harlan, the other by Justice White. I think that is right.

Mr. BAILEY. Justice Harlan concurred in the dissenting opinion of Justice White, and added a further statement of his own.

Mr. RAYNER. And Justice Brown, according to the record, stood with the majority.

Mr. BAILEY. I think the Senator will find there is nothing in the record to that effect.

Mr. RAYNER. There is no dissenting opinion of Justice Brown in this case.

Mr. BAILEY. That is true.

Mr. RAYNER. No one can read the dissenting opinion of Justice Brown in the second case without coming to the conclusion that he changed his mind between the argument of the first case and the argument of the second case on the whole proposition, both as to real and personal property.

Mr. BAILEY. It is generally supposed, and it has been frequently said, that Justice Shiras was the justice who changed his opinion, though I have information which leads me to think otherwise.

Mr. RAYNER. If the Senator will allow me, I am not speaking of that. Of course, there is a difference of opinion there.

Mr. BAILEY. I understand now. I thought the Senator was alluding to the other change of opinion.

Mr. RAYNER. Not at all. I want to call attention to this, because it is a matter of some importance. There has been a question whether Justice Shiras or Justice Gray changed in the second case, but what I want to get at is this: In reading Justice Brown's dissenting opinion in the second case I arrive at the conclusion that he made up his mind to dissent from the majority in the first case.

Mr. BAILEY. I feel sure that if Justice Brown had so far changed his opinion that he felt it incumbent upon him to write a dissenting opinion on the rehearing he would have been candid enough to have said so. That is the reason I am not able to believe he changed his opinion. I do not say it was Justice Shiras who changed his opinion; for I have it from very reputable men who were close to him that he was not the man; and I have heard it said that it was Justice Gray. I understand the rule which forbids the judges to discuss in public or elsewhere what takes place in their conference room, and I do not propose to discuss it here. It is enough for me to know that some justice changed his opinion, because in the first opinion the court expressly stated that on the three questions which I have specified the court was equally divided. Between the first and the second argument or between the first and the second opinion Justice Jackson rose from a sick bed to take part, and if they had still been 4 and 4 Justice Jackson, coming into the case for the first time, would have given a majority in favor of the law's validity as to personal property. But notwithstanding the fact that Justice Jackson, who had been sick and absent when the court stood 4 to 4, appeared and participated, somebody changed; and the court, with Justice Jackson present, then stood 5 to 4.

Mr. RAYNER. Will the Senator allow me to read just a few lines?

Mr. BAILEY. Certainly.

Mr. RAYNER. I suppose my suggestion is understood—that Justice Brown must have changed his opinion in the first case. As I recollect it, there were two dissenting opinions, one opinion by Justice White and the other by Justice Harlan. That is correct, is it not—two dissenting opinions? That left the court ostensibly 6 to 2, Justice Jackson being sick at the time. It left six judges apparently upon the record with the majority and two with the minority. Now, Judge Brown gave no dissenting opinion, and therefore under the record stood with the majority. Let me read a few lines from his dissenting opinion in the second case, which shows beyond all question that he changed his mind if he was with the majority in the first case:

> But, however this may be, I regard it as very clear that the clause requiring direct taxes to be apportioned to the population has no application to taxes which are not capable of apportionment according to population. It can not be supposed that the convention could have contemplated a practical inhibition upon the power of Congress to tax in some way all taxable property within the jurisdiction of the Federal Government for the purposes of a national revenue. And if the proposed tax were such that in its nature it could not be apportioned according to population, it naturally follows that it could not have been considered a direct tax, within the meaning of the clause in question.

Mr. BAILEY. All of that is excellent, but it merely repeats in somewhat varying form the argument originally made by Justice Chase in the Hylton case. I do not know what justice changed. I regret that anyone did so, but I know that the wisest and the most honest men change their opinions, and I do not hesitate to say that when an honest man changes his opinion he ought to change his position, and I will never criticise him for doing so.

Mr. RAYNER. I merely want to suggest to the Senator—perhaps I have not made myself understood—that he has one more judge in his favor than the record shows. My opinion is—I may be entirely wrong—that Justice Brown was with the majority really in the first case. May I ask the Senator a question for information?

Mr. BAILEY. Certainly.

Mr. RAYNER. I wish to ask the Senator's opinion, outside of the decisions, as to the construction of the clause in the Constitution. Does the Senator think that a tax on personal property—I am not now speaking of a tax on the income of personal property—is a direct tax?

Mr. BAILEY. I do not. Under the decisions and under the legislation of Congress I think we are bound, so far as precedents and authority can bind us, to conclude that the only direct tax within the meaning of the Constitution is a capitation tax and a tax on land with its improvements. As an original matter I might, as I have said before, have found some difficulty in reaching that conclusion, but in the light of the uniform and unvarying legislation of Congress, thus expressing its opinion, and in the light of the uniform and unvarying decisions of the court up to the Pollock case, I do not think the matter is left open to a doubt.

Let me say, and perhaps it does not become a Senator to say it, that I do not undervalue what is called the "legislative construction of the Constitution." I know it will always happen that in every Congress there are many lawyers as upright and as wise as those who sit upon the Supreme Bench. They are not under the same solemn and high obligation, I grant you, to study and understand the law, but there are in every Congress a number of men exceeding the number who constitute the Supreme Court equal to them as lawyers and superior to many of them.

I stated yesterday afternoon that I have never doubted the honesty of the Supreme Court or of any justice of it, but I have doubted their wisdom very often. I know they are honest, but I do not think that they are infallible, and this legislative construction is quite as persuasive to me when acquiesced in a long time as any other interpretation. It is such as Andrew Jackson declared ought to bind the Executive's conscience and control his judgment. He said, and others have repeated it since his time, that any construction of the Constitution generally received and acquiesced in for a long time ought to be accepted, and for that reason, if for no other, I accept the construction of the Constitution, which excludes everything but a capitation tax and a real-estate tax from the operation of the rule which requires them to be apportioned.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER (Mr. GALLINGER in the chair). Does the Senator from Texas yield to the Senator from Utah?

Mr. BAILEY. Certainly.

Mr. SUTHERLAND. I will not interrupt the Senator unless he is quite willing.

Mr. BAILEY. I am perfectly willing to answer the Senator from Utah.

Mr. SUTHERLAND. The Senator has been discussing again the legislative construction of this provision of the Constitution. I understood him to say in an earlier part of his argument that the Congress of the United States, in providing for this direct tax, was following the Hylton decision. I called attention to the fact that the first imposition of a tax of this character was only a year or two after the Hylton decision. I called the Senator's attention then to the report which had been requested by Congress of the then Secretary of the Treasury, and I have now before me the language of the resolution of the House submitting these questions to the Secretary of the Treasury, as follows:

> The duty enjoined is to "report a plan for laying and collecting direct taxes by apportionment among the several States agreeably to the rule prescribed by the Constitution, adapting the same as nearly as may be to such objects of direct taxation and such modes of collection as may appear by the laws and practice of the States, respectively, to be most eligible in each."

Evidencing, as I claim, the intention on the part of Congress to submit to the Secretary of the Treasury the question whether or not the direct tax should be imposed upon the various things which were the subject of direct taxes in the various States, which included not only lands, but incomes upon lands and personal property.

Mr. BAILEY. Those of us who are familiar with methods of legislation know how unsafe it would be to draw any important inference from the form of a resolution that might be passed here and addressed to the head of any department. The Senator from Utah is himself a careful legislator and attentive, and yet how often do we pass resolutions here without his knowing even the subject-matter of them! Resolutions asking for information can do no harm, and consequently they seldom or never provoke any thorough discussion; and few, if any, Senators outside of the particular committee which reports them or the individual Senator who has proposed them ever attends closely to their phraseology. For that reason I attach little importance to that resolution. But I do attach importance to the fact that when the Congress came to raise money by a system of taxation, they adopted as a criterion the one intimated partly, and partly decided, in the Hylton case, and followed from that time until the Pollock case.

Now, let me put this question to the Senator. The first act was passed in 1798, while John Adams was President. John Adams was an illustrious character, who wrote learnedly about our institutions in every respect. That act levied a tax on land and slaves. Now, according to the northern view rather than according to the southern view, slaves were personal property, though in almost every one of the Southern States they descended the same as real property. But is it thinkable that the southern men would have consented to a tax on slaves if

other kinds of personal property had been considered subject to a direct tax?

I do not say they could have prevented it, because then, as afterwards, they were in a minority, but I do say that if the southern statesmen of that generation—and they embraced men of the highest character and the greatest ability—had supposed that all kinds of personal property were subject to that direct tax, is it to be supposed that they would have occupied their seats without a protest and allowed the personal property of their people to be taxed when no tax was levied upon the personal property of their compatriots in other sections of the Union?

Mr. SUTHERLAND. They may have considered it a capitation tax.

Mr. BAILEY. That could not have been the reason, because if it had been laid as a capitation tax Congress would have been compelled to lay it in Rhode Island and Massachusetts, the same as in Mississippi, for you must apportion a capitation tax according to the census, precisely as you must apportion any other direct tax. So that explanation does not explain.

The only conceivable explanation is that the men who occupied seats in Congress at that day believed then, as I believe now, that the only direct tax was on real property or per capita, and the reason they levied a tax on the slave was that they treated him as real property under the law of almost every State where slavery existed.

With this unbroken line of decisions, Mr. President; with this unanimous opinion in every case up to the very last, is it asking too much of the American Congress to demand, on behalf of the American people, that this matter be resubmitted to the Supreme Court? It was decided by a vote 5 to 4; and I can say, without intending any invidious comparison, that however great the men who constituted the majority were, they did not outweigh in brain and character the men who made up the minority. With the scales of justice so evenly trembling in the balance, is it too much to ask that there shall be a reconsideration? The lawyers who protested against the tax and represented private greed exercised the right of petitioning that great court for a rehearing of the case. They obtained it, and on that rehearing one justice changed his mind and gave the court's decision against the people. I do not say this to impeach the integrity of that judge, or to bring reproach upon the court; I state as a reason for my hope that on the next rehearing several upright judges may change their minds, and that the next time the change will be in behalf of justice toward all the people and not to help the greedy rich escape the law's just tribute.

Mr. President, I thank the Senate for its long and patient attention; and I am done.

Mr. ALDRICH. I move that the Senate adjourn.

The motion was agreed to; and (at 4 o'clock and 43 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, April 28, 1909, at 12 o'clock meridian.

SENATE.

WEDNESDAY, *April 28, 1909.*

Prayer by Rev. Ulysses G. B. Pierce, of the city of Washington.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

Mr. NELSON presented memorials of sundry retail jewelers of St. Paul, Duluth, and Minneapolis, all in the State of Minnesota, remonstrating against an increase of the duty on imported watches, which were ordered to lie on the table.

He also presented sundry affidavits to accompany the bill (S. 1479) granting an increase of pension to Elizabeth Streit, which were referred to the Committee on Pensions.

Mr. CULLOM presented petitions of sundry tanners, jobbers, manufacturers, and dealers in leather goods, of Chicago, Ill., praying for the repeal of the duty on hides, which were ordered to lie on the table.

Mr. LA FOLLETTE presented a petition of Local Union No. 23, International Typographical Union, of Milwaukee, Wis., praying for a reduction of the duty on print paper and wood pulp, which was ordered to lie on the table.

He also presented a petition of sundry citizens of Milwaukee, Cudahy, Trade Lake, and St. Francis, all in the State of Wisconsin, praying for the repeal of the duty on hides, which was ordered to lie on the table.

He also presented a petition of sundry citizens of Milwaukee, Wis., praying for the removal of the duty on hides, which was ordered to lie on the table.

Mr. BROWN presented petitions of sundry citizens of Spalding, Lebanon, and Waco, all in the State of Nebraska, praying for a reduction of the duty on raw and refined sugars, which were ordered to lie on the table.

He also presented sundry affidavits to accompany the bill (S. 989) granting a pension to Nellie A. Getchell, which were referred to the Committee on Pensions.

He also presented an affidavit to accompany the bill (S. 551) granting an increase of pension to Asa J. Clothier, which was referred to the Committee on Pensions.

Mr. DICK presented petitions of the Business Men's Association of Barberton; of the Chamber of Commerce of Akron, Ohio; and of the National Grange, Patrons of Husbandry, of Concord, N. H., praying that an appropriation be made for the improvement of the public highways of the country, which were referred to the Committee on Agriculture and Forestry.

He also presented the petition of George E. Hibbard, of Chicago, Ill., praying for the enactment of legislation to provide for the temporary government of the Isle of Pines, Cuba, which was referred to the Committee on Foreign Relations.

He also presented petitions of Local Lodges Nos. 668, 441, 1013, 1114, 730, 177, 68, 94, 376, 285, 477, 833, and 147, of Xenia, Massillon, Bellevue, Zanesville, Norwalk, Ironton, Canton, Tiffin, Barberton, Coshocton, Sandusky, Marietta, Troy, and Defiance, all of the Benevolent and Protective Order of Elks in the State of Ohio, praying for the enactment of legislation to create a national reserve in the State of Wyoming for the care and maintenance of the American elk, which were referred to the Committee on Forest Reservations and the Protection of Game.

He also presented a petition of the Board of Trade of Niles, Ohio, and a petition of the Board of Trade of Middleport, Ohio, praying that an appropriation be made for the improvement of the national waterways of the country, which were referred to the Committee on Commerce.

He also presented petitions of the American Ceramic Society, of Columbus, Ohio, praying that an increased appropriation be made for the technological branch of the United States Geological Survey, at Pittsburg, Pa., for the purpose of testing the clay industry, which were referred to the Committee on Appropriations.

He also presented a petition of the Council of Jewish Women, of Cincinnati, Ohio, praying for the passage of the so-called "children's bureau bill," which was referred to the Committee on Education and Labor.

He also presented a memorial of the Cooperative Trades and Labor Council, of Hamilton, Ohio, remonstrating against the decision of the Supreme Court of the District of Columbia in imposing a jail sentence on Messrs. Gompers, Mitchell, and Morrison, which was referred to the Committee on the Judiciary.

He also presented a petition of the Society of Architects, of Columbus, Ohio, praying that the Lincoln Monument be erected on the site near the Union Station, Washington, D. C., as recommended by the Park Commission, which was referred to the Committee on the Library.

He also presented a memorial of sundry employees of the tin-plate mills of Martins Ferry, Ohio, remonstrating against the drawback feature contained in the so-called "Payne tariff bill" relative to tin plates, which was ordered to lie on the table.

He also presented petitions of sundry lithographers of the United States, praying for an increase of the duty on lithographic products, which were ordered to lie on the table.

He also presented a petition of sundry employees of the Novelty Cutlery Company, of Canton, Ohio, praying for the retention of the proposed duty on imported knives or erasers, which was ordered to lie on the table.

He also presented a petition of Local Union No. 601, of Coshocton, Ohio, and a petition of Local Union No. 364, of Warren, Ohio, International Typographical Union, praying for a reduction of the duty on wood pulp and print paper, which were ordered to lie on the table.

He also presented a petition of sundry employees of the Williams Shoe Company, of Cincinnati, Ohio, praying for the repeal of the duty on hides, which was ordered to lie on the table.

He also presented memorials of sundry importers of millinery and straw goods of Cleveland, Cincinnati, and Columbus, all in the State of Ohio, remonstrating against the repeal of the duty on millinery, which were ordered to lie on the table.

He also presented a memorial of sundry iron and steel roofing workers of Youngstown, Ohio, and a petition of the Iron and Steel Roofing Company of Youngstown, Ohio, remonstrating against a reduction of the duty on sheet iron and steel, which were ordered to lie on the table.

He also presented a memorial of sundry citizens of Defiance County, Ohio, remonstrating against the imposition of a duty on essential oils, drugs, etc., which was ordered to lie on the table.